



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Department of Social Services
VAC Chapter Number:	22 VAC 40-130
Regulation Title:	Minimum Standards for Licensed Child-Placing Agencies
Action Title:	Approval of Final Regulation
Date:	June 14, 2000

Please refer 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* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The final regulation is amending the existing Minimum Standards for Licensed Private Child-Placing Agencies (1989). The final regulation addresses multiple programs offered by child-placing agencies by combining requirements into one set of standards. The standards consolidate requirements related to organization, staff qualifications, caseloads, staff training, required reports to the department, and record keeping requirements in order to streamline the department's regulatory oversight of these agencies. However, standards specific to the different services offered are divided into parts to make the regulation easier to follow. The final regulation addresses the following topical areas: Definitions, Organization and Administration, Personnel, Foster Care Services, Adoption Services to include domestic, international and parental placement adoptions, Independent Living Placement Services, Services related to the Status of Children of Assisted Conception, Reports, Case Record Requirements, and Treatment Foster Care Services.

The final regulation has several substantive changes from the proposed regulation. Revisions were made to the definition of corporal punishment to more clearly identify the intent and actions that are covered by this definition. New standards are added to Part II that require policies to cover the discipline and behavior management methods including a requirement that agencies will develop an agreed upon plan of discipline with the adoptive and foster parents. During home studies agencies will be required to be sensitive to the adoptive and foster parent applicants racial, ethnic, and religious differences when the agencies evaluate the discipline the applicants will use. New standards were added to cover staff training, smaller caseloads in independent living placement agencies, foster and adoptive home placement agreement forms, which are now included as part of the regulation; and covering the scope and applicability of this regulation. Foster care services in Part IV have been revised to require certain information prior to admission of the child, changes in the service plan and progress reports for the child, additional training topics for foster parents, a required foster home agreement, and additional items to evaluate during the foster home study.

Through regulation of the Department of Medical Assistance Services, certain sections of this regulation will apply to local departments of social services that apply for Medicaid certification of their treatment foster care case management services. Part I -Definitions, Legal Base, and Scope and Applicability; Part II - Organization and Administration; Part III - Personnel, Part IX - Reports; Part X -Case Record Requirements; and Part XI - Treatment Foster Care will apply to certified local departments of social services. The final regulation exempts local departments of social services from the requirement to submit financial statements with their application, changes the time frames for the treatment and service plan and progress reports in treatment foster care, exempts short-term foster care placements from some of the requirements, and updates the requirements of several standards due to changes in law.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

Changes made to the final regulation since publication of the proposed regulation are as follows. Please see the “Detail of Changes” for specific revisions and additions to the regulation.

Part I. Definitions and Authority.

22 VAC 40-130-10. Definitions were added to cover adoptive placements, birth parents, emergency placements, short-term placements, a person, a placing agency, physical abuse, sexual abuse, mental abuse, and physical neglect. Definitions of assisted conception, foster home, permanent foster care placement, and treatment team were revised. These additions and changes are necessary to clarify the regulation. The definition of corporal punishment was revised to clarify that only abusive corporal punishment is prohibited.

22 VAC 40-130-25. The scope and applicability of the regulation were added in order to clearly state to whom the regulations apply.

Part II. Organization and Administration

22 VAC 40-130-30. Standards regarding sponsorship were revised to include requirements that the individual who applies to be licensed as a child-placing agency shall have knowledge of and experience in the program and services the agency offers. This requirement was also added to corporations and partnerships, stating that at least one of the members of the board of directors or the partnership have this knowledge and experience.

22 VAC 40-130-50, 22 VAC 40-130-60. Local departments of social services are given an exemption to the requirements to submit financial plans with the application for certification.

22 VAC 40-130-130. Caseload standards were revised to clarify and to allow an exception for treatment foster care agencies where the worker carries a caseload of both treatment foster care children and other children. Independent living placement agencies have smaller caseloads than previously allowed.

22 Vac 40-130-155. New policies and procedures were added to this section and removed from Part III, which deals strictly with personnel issues. New requirements include: Agencies must implement policies ensuring that children are not subject to corporal punishment, abuse, neglect, belittling remarks, or denied essential services, meals, water, and personal necessities; and agencies must comply with the Code of Virginia and applicable regulations regarding background investigations and approval of adoptive and foster homes. New standards have been added to outline expectations that the child placing agencies must have policies and procedures governing acceptable methods of discipline and that these policies must be based on scientific literature in the field. The policies must also include information regarding an agreed upon plan of discipline between the agency and the foster or adoptive parents. The agency must disclose to the applicant in writing prior to or during the home study the agency’s criteria and values pertaining to discipline and parenting practices that may influence its assessments of the applicants, and the agency must inform the foster or adoptive parent or parents in writing prior

to or during the home study that the plan of discipline is a mutually agreeable statement that reflects the child's best interests in adjusting to a new family environment.

Part III – Personnel.

22 VAC 40-130-195. A proposed standard under ongoing staff development was revised to allow an update on topics covered in new staff orientation, rather than a complete review of these topics and to ensure that the agency review with staff its policies on acceptable methods of control and discipline and that part of the ongoing staff development will include a review of the scientific literature in the field of discipline issues.

Part IV – Foster Care Services.

22 VAC 40-130-198. Standard was added stating that agencies are responsible for maintaining compliance with these standards and all related laws in Virginia.

22 VAC 40-130-202. Policies and procedures for foster care agencies must include plans for active cases if the agency ceases to operate.

22 VAC 40-130-210. Standards regarding entrustment agreements were revised to comport with changes in law; Intake requirements now add medications to information received about the child; require that social histories be received prior to admission; exempt emergency placements and short-term placements from certain requirements; specify what must be included in the child's initial physical examination; add information to the agency's placement agreement received from the placing agency or parent; and require documentation of the date material is received by the agency.

22 VAC 40-130-212 and 22 VAC 40-130-213. Service plans and progress reports now specify these reports must be individualized; reference the requirements of law in the development of and review of service plans for agencies that have custody of the child; clarify and simplify the service plan requirements for agencies that do not have custody of the child; include a different service plan for agencies providing short-term placements; and clarify the requirements for quarterly progress reports to be due 90 days after admission and every 90 days thereafter.

22 VAC 40-130-221. Medical Care. Standard A.4. was revised to allow physical examination to be signed by physician, his designee or official of the local health department.

22 VAC 40-130-223. Requirements are added to require consultation with the child's placing agency in certain circumstances such as prior to moving a child from one foster home to another.

22 VAC 40-130-261. As a result of public comment, additional topics were added to the foster parent training requirements and a requirement that foster parents be consulted on their training needs;

22 VAC 40-130-270. Home studies for foster parents were revised to require the agency to be sensitive to the foster parents' racial, ethnic, and religious differences when evaluating the discipline the foster parents will use. Changes were made to require review of evacuation plans with children who are developmentally able to understand. Requirements for smoke detectors and fire extinguishers were removed due to changes in law that allow this to be regulated only by the Department of Housing and Community Development (State Fire Marshal). Standards related to criminal record and child abuse and neglect background checks of foster parents were revised to refer to the Code of Virginia and regulations promulgated by the State Board of Social Services. The requirement that agencies offer foster parents an interview to explain the agency's decision regarding approval or disapproval was deleted.

22 VAC 40-130-271. Foster home agreement forms have been developed and made a part of the regulation. A statement that the agency and the foster parents have agreed to a plan of discipline for the child is added to the agreement form.

22 VAC 40-130-280. Additional requirements were added to the foster home records to include any complaints and concerns the agency has with the foster parents and the date and reason for closure.

Part V – Adoption Services.

References to all adoption code sections of the Code of Virginia have been corrected to reference the new Code citations effective July 1, 2000.

22 VAC 40-130-301. The entrustment agreement requirements have been revised to comport with changes in law.

22 VAC 40-130-310. Additional requirements have been added to the content of the social history to have a more complete picture of the child, the child's family, the wishes of the birth mother, and prenatal care received by the child's birth mother. A new standard requires the agency to review the child's social history with the parents.

22 VAC 40-130-340. Additional items were added to preparing an older child for adoption. These items cover attachment issues, the need for the child to have contact with prior caretakers and birth relatives, and preparation of the adoptive family for the child.

22 VAC 40-130-400. Requirements for orientation of adoptive applicants have been added to assure that adoptive applicants are given as much information about the agency and the adoption process as possible. New standards were added to the home study to require agencies to discuss the impact on the child if the adoptive parents' life expectancy is altered and to develop a plan of care if the adoptive parent should become incapacitated.

22 VAC 40-130-401. A new requirement has been added to areas to assess in the adoptive home study related to the assessment of discipline the adoptive parents will use. The standard requires the agency to be sensitive to the adoptive applicants' racial, ethnic, and religious differences. A new requirement for a written escape plan in case of emergencies was added.

22 VAC 40-130-403. An adoptive placement agreement form has been added as part of the regulation. This will include all of the requirements of the standards; therefore, not requiring the standards to repeat the requirements of a placement agreement. Agencies will be able to add additional items to the agreement if necessary.

22 VAC 40-130-420. Additional requirements have been added to information that must be kept in the birth parents' record. These include descriptions of childhood and other background information, when known; the birth parents' relationship to each other; and information about the knowledge other family members have about the birth parent's decision to place the child for adoption.

Part VI. Interstate and Intercountry Adoption.

22 VAC 40-130-452. Several changes were made to the intercountry placement standards at the request of the private agencies that conduct intercountry adoptions. These still provide protection to the child and the adoptive family, but give flexibility to agencies that are unable to receive certain information on the child or the child's birth family. Revisions require agencies to advise adoptive applicants about the risks involved in adopting a child from another country, including the lack of medical, developmental, and other background information on the child. Agencies must discuss with applicants the life long impact that the child's history will have on

the child, the expected behaviors, and attachment and bonding issues. Written information on the laws, policies and procedures for U. S. citizens to adopt from a country must be provided to the staff of the agency and applicants to adopt a child. The agency must make every effort to obtain documentation of a child's legal availability for adoption before the child is assigned to the adoptive applicants. The agency must make every effort to obtain credentials and qualifications of agents or facilitators in the foreign countries and evaluate the agent's experience and knowledge in the field of intercountry adoptions, his reputation with other clients and with the U. S. Embassy in the other country, and his willingness to provide information to the agency. All of this information is necessary to protect U. S. citizens who apply to adopt children from other countries.

Part VIII – Independent Living Placements

22 VAC 40-130-456. Agencies will be required to have at least weekly telephone contact with the youth in independent living placement and at least twice monthly face-to-face contacts. An exception is granted for youth living in college dormitories.

Part IX – Reports.

22 VAC 40-130-480. The requirement regarding notification of the licensing representative in cases of child abuse or neglect investigations in foster homes has been revised to require a status report in 60 days and a final report in 90 days.

Part X – Case Record Requirements.

22 VAC 40-130-550. The requirements regarding release of non-identifying information have been expanded and more clearly reference the law.

Part XI. Treatment Foster Care

22 VAC 40-130-640. New standards have been added requiring receipt of an application for admission to include the physical examination and social history prior to admission. The requirement for a two-week initial service plan has been eliminated, but a requirement for a written intake summary within two weeks of placement has been added. The written intake summary includes a requirement for the plan of services to be provided to the child during the child's first 45 days in care.

22 VAC 40-130-650. New requirements were added to the placement agreement between the agency and the parent or placing agency. These cover provisions for consent of routine and emergency medical care, out of state travel, and participation in fund raising activities.

22 VAC 40-130-660. Treatment and service plans have been revised to clarify and separate the treatment goals from the permanency planning goals. Standards were added to allow treatment foster parents to receive a copy of the treatment and service plan, as long as confidential information about the child's birth family is not revealed. A copy shall also be provided to the parents, if appropriate, and with the same restriction. Agencies will be required to document why any of these parties did not participate in developing the treatment and service plan.

22 VAC 40-130-670. Progress report standards have been revised to clarify and relate the standards more to the time period covered by the report. A new requirement states that the agency shall provide a copy of the report to the placing agency, and to the treatment foster parents, if appropriate, as long as confidential information is protected.

22 VAC 40-130-770. The treatment foster home agreement contains the same requirements as for foster parents. Agencies will be required to use the foster home placement agreement developed and made a part of the regulation, but will be able to add additional requirements as necessary.

22 VAC 40-130-790. Agencies will be required to consult the treatment foster parents on their training needs as part of the training plan for treatment foster parents.

22 VAC 40-130-810. Home studies for treatment foster parents were revised to require the agency to be sensitive to the foster parents' racial, ethnic, and religious differences when evaluating the discipline the foster parents will use.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

The Board of Social Services is requested to approve the final adoption of the Minimum Standards for Licensed Child-Placing Agencies and an additional thirty days of public comment at its June 2000 meeting.

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, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law

The statutory authority for promulgating this regulation is found in § 63.1-202 of the Code of Virginia. This statute requires the State Board of Social Services to promulgate regulations for the activities, services and facilities of persons or agencies required to be licensed and to design the regulations to ensure that they are conducive to the welfare of the children under the custody or control of such persons or agencies. The statute requires that the regulations include matters relating to the sex, age, and number of children to be cared for, the buildings and premises to be used, and reasonable standards for the activities and services provided to the children. The Office of the Attorney General has certified that the Department of Social Services has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law. This document is attached to the regulation.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final 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.

The 1989 regulation was reviewed and found inadequate to cover the many new services now being offered by licensed child-placing agencies. Revisions were made to the proposed standards to clarify terms and make the regulation easier to understand. This regulation is necessary to protect the safety and welfare of the children and families receiving services from these agencies and to assure a minimum level of quality to the care and services provided by the agencies. The scope of authority and responsibility given to licensed child-placing agencies is extensive. Once a license is issued to an agency authorizing it to provide these services, it may take legal custody of children, make permanent plans for their future, approve foster and adoptive homes to care for these children, and offer a number of services to assist the children and their families. These are serious responsibilities. The department accepts a great responsibility in making the decision to license a child-placing agency. Children need the department's oversight and supervision through licensing visits and through standards that will establish expectations for the care and services they receive.

Treatment foster care standards have been added to bring the standards up to the current practice of the private child-placing agencies and to allow certification of agencies for Medicaid reimbursement of treatment foster care case management services.

The current standards have no requirements related to intercountry adoptions. Virginia's citizens have no assurance that the agencies will provide them with current information about the foreign countries involved or about the children and their birth families. The final regulation establishes standards to govern these adoptions.

Currently the standards do not require any training of staff or foster parents. Training is critical to the success of the agency and its foster parents in providing services to the children in care. The final regulation has new requirements to cover this area. Also, orientation is required for adoptive applicants to allow them the opportunity to learn more about adoption laws, the risks involved, and the adjustments necessary when adopting a child.

Policies and procedures have been added to the regulation in order to require agencies to develop policies governing the care and discipline of children under their control, the investigation of complaints made against staff, and that agencies comply with Virginia law and regulations governing background investigations of foster and adoptive applicants.

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 of the regulatory action's detail.

The regulation adds several important criteria to evaluate when making a decision to approve a family to adopt a child. These standards are considered crucial since the licensed agencies make decisions that have a life-long impact on a child's life. The 1989 standards do not address requirements for staff training or foster and adoptive parent orientation and training. This need was recognized by the adoption and foster care committees who recommended that this area be addressed in the proposed regulation.

The 1989 standards do not address requirements for agencies providing international adoption services. There are few state or federal laws governing international adoptions. Families wishing to adopt a child from another country and the child being adopted have very little protection under state or federal law. The final regulation has several significant changes from the proposed regulation. The department received numerous public comments regarding the proposed international adoption standards. Representatives met with agencies that provide international adoptions and together agreed upon the standards in the final regulation.

The final regulation also has several changes from the proposed treatment foster care standards in the areas of applications for admission, social histories, initial assessments, treatment and service plans, and progress reports. These changes were made in response to many comments received from private and public child-placing agencies, and from the Virginia Association of Licensed Private Child-Placing Agencies.

The final regulation has several substantive changes from the proposed regulation. Revisions were made to the definition of corporal punishment to more clearly identify the actions that are covered by this definition. New standards on discipline policies have been added, requiring that agencies base their discipline policies on scientific literature, develop an agreed upon plan of discipline with the adoptive and foster parents, and advise foster and adoptive applicants before or during the home study of the agency's criteria and values regarding discipline and parenting practices. During home studies agencies will be required to be sensitive to the adoptive and foster parent applicants racial, ethnic and religious differences when the agencies evaluate the discipline the applicants will use. New standards were added to the proposed regulation to cover staff training and require smaller caseloads in treatment foster care and independent living placement agencies. Foster and adoptive home placement agreement forms are now included as part of the regulation. A statement of scope and applicability of this regulation has been added.

The final regulation also exempts local departments of social services from the requirement to submit financial statements with their application for certification as a provider of treatment foster care case management, changes the time frames for the treatment and service plan and progress reports in treatment foster care, exempts short-term foster care placements from some of the requirements, and updates the requirements of several standards due to changes in law.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 advantages of the regulation are:

- * Virginia's citizens who apply to adopt will be protected by the requirements governing international and domestic adoptions;
- * Families will be protected by requirements governing counseling for birth parents, service plans for children, increased involvement by parents and reunification of families;
- * Families will benefit from the availability of these private resources and from the knowledge that the state has established regulations to offer a minimal level of protection for them;
- * The child-placing agencies will benefit by having the services they offer given a higher level of credibility and accountability; and
- * Local departments of social services and Family Assessment and Planning Teams will benefit by knowing that the private child-placing agencies are regulated and held accountable for the services they provide to foster children.

There are no disadvantages to the public or the Commonwealth in implementing this regulation.

Pertinent matters of interest to the regulated community involve the substantive changes outlined in this document. All of the changes discussed in the "Changes Made Since the Proposed Stage" were made either as a result of public comments received during the initial sixty day comment period or added after the public comment period. Since there have been many substantive changes, the Department plans to provide an additional thirty days of public comment for the regulated community and its customers to have time to review these changes and comment on them.

Government officials and the public may be interested in the additional safeguards put in place for persons who apply to adopt children from other countries, in the requirements for treatment foster care agencies that work with seriously disturbed children, in the additional training required of foster and adoptive parents, in the requirements that private agencies consult and collaborate with the public placing agencies, and in the requirement that an agreed upon plan of discipline be developed for children to be placed in foster or adoptive homes.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

GENERAL COMMENTS

Comments from licensed child-placing agencies:

In general, “I believe that agencies are already doing most of what the proposed standards require but providing written documentation of some items will minimize instances in which they are overlooked and reduce the chances of any agency/client misunderstandings.”

“I am happy we are putting some teeth into intercountry adoption. Whether we can obtain everything we want from overseas is a question. An explanation could be provided by an agency as to why a standard is not met when that is the case. We need to point out to the adoptive parents when there are evident gaps (in information).”

“I support the proposed intercountry standards.”

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Comment: Reorganize document to have a better organization by grouping the 5 program areas together and putting Organization and Administration and Personnel at beginning and Records and Case Record Requirements at end. (From licensed child-placing agency)

Response: We agree and would prefer to do this, but cannot do this without repealing the entire 1989 minimum standards and promulgating a completely new regulation.

Rationale: Organization of standards is governed by the Virginia Administrative Code numbering. Changing the organization of the parts is not possible in this revision.

PART I -DEFINITIONS AND AUTHORITY

Comment: 22 VAC 40-130-10 - Definitions - Definition of “child” needs clarification if agencies can place individuals who are between the ages of 18-20 or if this applies only to independent living programs. Also asked if the definition should include children up “through” the age of 21. (From licensed child-placing agency)

Response: Will keep definition as is and clarify in guidance material.

Rationale: Cannot include children through the age of 21 unless they are a special education placement.

Comment: Definition of Legal Parents is confusing because it excludes birth or legal parents in the text of the document when they are not the same. (From licensed child-placing agency)

Response: Have eliminated use of legal parents & refer instead to “birth” parents. Birth parents have been defined.

Rationale: Clarification needed.

Comment: Definition of permanent foster care placement needs clarification regarding the term “natural person.” States that it also appears to be okay for permanent foster care placements to be made in the homes of persons who are not licensed. (From licensed child-placing agency)

Response: A sentence has been added to the definition to clarify. Also, natural person is defined.

Rationale: Clarification needed. Natural person has been defined.

Comment: Definition of treatment foster parents states that treatment foster parents must be approved by a “licensed or certified” child-placing agency. Comment asks what the difference is between these two terms. (From licensed child-placing agency)

Response: The definitions also include “certification.” The term certification will apply to public departments of social services if they apply to be a child-placing agency providing treatment foster care services under any Medicaid waivers that may be granted. Licensure applies to private child-placing agencies. This will be clarified in guidance material for the standards.

Rationale: Clarification needed.

PART II - ORGANIZATION AND ADMINISTRATION

Comment: 22 VAC 40-130-30, 4, A - Sponsorship - New standard requires that when an agency is sponsored by a corporation, it shall have a board which serves as the licensee and is made up of three or more members, where at least one of the members has knowledge of and experience in the programs and services the agency offers. The comment states that this poses a problem for private, for-profit corporations because the State Corporation Commission requires a person to own stock to be on the Board of Directors. Some of the private for-profits are owned by sole owners or have less than 3 people who own stock, therefore, less than 3 board members. They proposed changing the wording to: where at least one of the members has knowledge of and experience in the programs and services the agency offers. Comments also state that this same phrase should be added to the other categories of entities that may be licensed. (From Virginia Association of Licensed Private Child-Placing Agencies - VALCPA)

Response: Agree to change as recommended.

Rationale: Requiring at least three board members would be too restrictive for some agencies. However, it is very important that at least one person involved in the operation of child-placing agencies have knowledge and experience in the programs and services it offers.

Comment: 22 VAC 40-130-40 - Maintaining standards - The recommendation is to delete the phrase “enrolled Medicaid provider” since these standards are for the Department of Social Services’ licensed providers only. The Department of Medical Assistance Services is not certifying child-placing agencies at this time and it is not clear if and when this will occur. (From VALCPA)

Response: Agree to strike the “enrolled Medicaid provider” and replace it with “certified agency.”

Rationale: Certified is used in other places in the standards and changing it here will provide consistency throughout the standards.

Comment: 22 VAC 40-130-80 - Audit - The requirement for an annual audit by a CPA poses a financial hardship on small agencies. Two CPA's (certified public accountants) we talked with prior to completing our last audit found it incredible that some less involved form of assuring an agency's fiscal soundness could not be used. (From licensed child-placing agency)

Response: Requirement will remain.

Rationale: An audit is a consistent method of verifying financial stability.

Comment: 22 VAC 40-130-100 - Agency Setting - "Provide professional staff" needs more definition. (From public department of social services)

Comment: 22 VAC 40-130-100. The agency shall provide professional staff and maintain an office within Virginia from which the child-placing activities are carried out.

Recommends that this be reworded to clearly state that agency must have a fully staffed office in Virginia. (From licensing staff person)

Response: Standard has been reworded to clarify. Professional staff is defined.

Rationale: Clarification needed.

Comment: 22 VAC 40-130-120 - Posting of license - The proposed standard requires that licensees post the most recently issued license and the most recent compliance plan or a written notice of where it may be reviewed in the facility in a prominent location at each public entrance to the premises. The recommendation is to designate a space on the license to indicate where the compliance plan is posted as this will be less cumbersome and present a more professional appearance. (From VALCPA)

Response: Do not agree.

Rationale: This standard is currently required in the department's General Procedures and Information for Licensure and applies to all licensed programs. An exception cannot be made for child-placing agencies without revising the General Procedures. The comment will be considered in future revisions of the General Procedures.

Comment: 22 VAC 40-130-130 - Recommends moving Caseload numbers and Licensed Capacity, and Policies and Procedures (22 VAC 40-130-162) to the programmatic chapters they refer to. Says A under policies and procedures is already repeated on p. 91, A. (From licensed child-placing agency)

Response: Will keep Caseload and Licensed Capacity in this section since it applies to all agencies. In each program part, we will refer back to this section for information on caseloads.

Rationale: Too repetitive to have these requirements in every Part.

Comment: 22 VAC 40-130-130 - Caseload Numbers and Licensed Capacity - This section does not address "mixed" caseloads of regular foster care and treatment foster care children. A

possible solution is that treatment a foster care child equals two regular foster care children for the purpose of figuring caseload. As an example, with a maximum of caseload of 25 for full time staff a caseworker could have 10 treatment foster care children and five regular foster care children on his or her caseload. $[10 \times 2 + 5=25]$. This will allow Child Placing Agencies the needed flexibility to respond to issues of “step down” and permanency without disrupting the current placement. (From licensed child-placing agency)

Comment: 22 VAC 40-130-130. Caseload Numbers and Licensed Capacity. “A. Total agency capacity shall be the sum of the following: 1. A maximum of 25 children for a full-time child-placing staff person, except in treatment foster care; 2. A maximum of 10 children for a beginning trainee; This which may be increased to 15 by the end of the first year and 20 by the end of the second year, by which time he will qualify as a caseworker. except in treatment foster care. The agency shall have a training program for trainees during the two years. It shall have its own list of topics to be covered. 3. A maximum of five children for each student intern, except in treatment foster care.”

States that caseloads have not been established for staff working with independent living youth. (From licensing staff person)

Comment: 22 VAC 40-130-130 - Recommends allowing a mixed caseload in Treatment Foster Care to be higher than the 12 stipulated in this standard. (From licensed child-placing agency)

Response: Have added standard to allow caseload to be 15 in treatment foster care, as long as no more than 10 children are in the treatment foster care program and as long as the criteria for adjusting the caseload downward are not present.

Rationale: Many agencies have foster children in care who are not in treatment foster care. Also, treatment foster care agencies will have some children who are stepping down from the intensive services of TFC and do not need the same level of supervision and services by agency staff.

Comment: 22 VAC 40-130-130, A, 1 - Recommends 15 as a maximum of a caseload for a full-time child-placing staff. (From public department of social services)

Comment: 22 VAC 40-130-130, A, 2 - Delete “... and 20 by the end of the second year.” (From public department of social services)

Response: Do not agree.

Rationale: Reducing the caseload size for all child-placing agencies would have significant fiscal impact. Specialized programs will have lower caseloads.

Comment: 22 VAC 40-130-130, B - Treatment foster care programs shall have a maximum of 10 children, rather than 12. (From licensed child-placing agency)

Response: See response to earlier comment.

Rationale: A caseload of 10 may be too restrictive for some agencies where caseworkers have mixed caseloads.

Comment: 22 VAC 40-130-130, E, - Children to be counted in the agency caseload are:

1. Children in agency custody including children for whom an interlocutory order has been entered who are still awaiting a final order, and 2. Children not in the custody of the agency, but who are being supervised in a foster or adoptive home, treatment foster home, group home, institution, or independent living arrangement for another agency or individual and children who are receiving services from the agency in any of these settings.

States that E.2. needs clarification. The underlined phrase at the end of the sentence is not necessary. (From licensing staff person)

Response: Agree.

Rationale: This phrase is redundant.

Comment: 22 VAC 40-130-130, E - Need to have requirement that agencies that take youth 18-21 must follow standards. (From VALCPA)

Response: Agree. Standard added to require agencies accepting or maintaining youth 18-21 shall provide care and services as required by these standards.

Rationale: Many agencies have youth who turn 18 while in care. Independent living placement agencies may also take youth 18 and over into care. Standards need to address the agency has responsibility in these situations.

Comment: 22 VAC 40-130-140, E - Conflict of Interest - "Staff members of an agency may not receive services as foster parents of the agency for which they work." Shouldn't this be "provide?" Or does it mean that staff members may not receive services for their children? Needs clarification. (From licensed child-placing agency)

Response: Have re-worded standard.

Rationale: Clarification needed. Intent of standard is to prevent staff of an agency from being a foster parent for the same agency.

PART III - PERSONNEL

Comment: 22 VAC 40-130-170 - Job Descriptions. A. "The agency shall have a written description of the duties and responsibilities, educational requirements and work experience required for each staff classification in its program."

Recommends that the job description also require the title of the individual to whom the position reports. (From licensing staff person)

Response: Agree. Will add requirement that job title of immediate supervisor be added to the job description.

Rationale: It is important that staff persons know to whom they report.

Comment: 22 VAC 40-130-180 - Personnel records - Clarification is needed regarding whether references the applicant supplies without actually being requested are acceptable. (From VALCPA)

Response: No change needed to standard. Agencies may accept additional references supplied by the applicant, but must initiate and request at least two reference requests and cannot accept only those provided by the applicant.

Rationale: Agencies need to gather as much information as possible on applicants to be foster and adoptive parents. Reference letters written for and provided by the applicants may not be as objective as those directly requested by the agency.

Comment: 22 VAC 40-130-190, C, 2 - Recommend keeping the experience requirement three years (for Executive Director). (From licensed child-placing agency)

Response: Do not agree.

Rationale: Persons serving in this position should have at least five years of experience in the field before accepting the responsibility of directing an agency that makes decisions that affect the rest of a child's life.

Comment: 22 VAC 40-130-190, I - "The agency shall, if it makes use of volunteers and students/interns, have a written plan for their selection, orientation, training, supervision and assignment."

Recommends that there be qualifications stipulated for the individual who supervises students. (From licensing staff person)

Response: A standard that had addressed this matter (190.I.3.) in the 1989 regulation was deleted from the proposed standards. This standard has been re-instated in the new regulation.

Rationale: It is important that students are supervised by qualified staff.

Comment: 22 VAC 40-130-195 - Staff development - Recommendation is to delete this requirement as it is not necessary to review every year topics that were already covered during the staff orientation. This is cumbersome and repetitive for staff with longevity with the agency. (From VALCPA)

Response: Agree. Standard has been changed to require that staff receive updated information on the orientation topics whenever there is a change in law, regulation, or policy.

Rationale: To avoid repetition of the same orientation material.

Comment: 22 VAC 40-130-195, C - The agency shall schedule or make available outside the agency education or training for professional staff throughout each calendar year to include: (This addition would better meet the various needs of staff whose education and experience may be disparate.) (From licensed child-placing agency)

Response: Agree.

Rationale: Allows more flexibility in meeting the intent of the standard.

PART IV - FOSTER CARE SERVICES

Comment: 22 VAC 40-130-200 - Program Statement - Recommends that the foster care program statement include the agency's criteria and procedures for accepting emergency placements and short-term placements. (From licensing staff person)

Response: Agree. Standard has been added requiring this, if applicable.

Rationale: Agencies that offer these services should have written procedures in place.

Comment: 22 VAC 40-130-200, A, 2 - The policy shall also state that race shall not be the determining factor in determining the best placement for the child. (The Multi-Ethnic Placement Act does not forbid race as one of several factors to be considered in the placement for a specific child. It forbids holding a child in care for a racial matching.) (From licensed child-placing agency)

Response: Do not agree.

Rationale: Guidance documents for The Multi-Ethnic Placement Act as amended by the Interethnic Adoption Provisions of 1996 clearly state that race can not be used as a factor in foster care or adoptive placements of children.

Comment: 22 VAC 40-130-202, A - Does this mean you want a specific agreement that another agency will take all your cases? It seems unlikely any agency would agree to take all the children in the care of another agency without knowing what their own situation would be at the time or the number of children involved. (From licensed child-placing agency)

Response: A separate standard has been added to address the matter of an agency that ceases operation. The policy should address what plans the agency will put in place if the agency should close.

Rationale: It is important that agencies have policies addressing what will happen to their cases if they must close.

Comment: 22 VAC 40-130-202, B - Policy re: prohibition against physical restraint, except in treatment foster care - One agency comments that this should be allowed for "regular" foster parents if they are trained in an acceptable restraint technique. (From licensed child-placing agency)

Response: Do not agree.

Rationale: Physical restraint, as defined in the regulation, should only be applied to children in the most intensive treatment programs and as part of a therapeutic intervention.

Comment: 22 VAC 40-130-210-B, 2, d - Intake - How can one assess “potential problems with the child’s placement” if the child has not been placed yet? (From licensed child-placing agency)

Response: Agree. Standard has been deleted.

Rationale: It would be too difficult for agencies to provide a valid assessment of problems a child may have, when the child has not been placed.

Comment: 22 VAC 40-130-210, G, 1, f. - Foster Care Social History - Child’s history of abuse or neglect. Does this include pre-natal neglect, i.e., lack of pre-natal care, alcohol or other substance use, etc? (From licensed child-placing agency)

Response: A standard has been added to the adoption section to ask for this information, but it is not required in the foster care section. The agency may always require more information than the standards require.

Comment: 22 VAC 40-130-212, D - Service Plans in Foster Care - “The agency shall include and work with the child, the placing agency and the parents, where appropriate, in the development of the service plan and provide a copy to them.” Is this a violation of confidentiality to share the entire treatment plan with all parties i.e. should the child and the foster family be privy to services being provided to the family? (From licensed child-placing agency)

Response: Agree. Have revised standards to require agencies to send copy to custodial agency and to others, as appropriate, as long as confidential information is not included in the service plan.

Rationale: Section 63.1-209 prohibits the release of confidential information concerning a child and his family. Service plans may contain personal information about the parents that cannot be shared with the foster parents.

Comment: 22 VAC 40-130-212, C, 3 - Requirements for service plan in regular foster care. States that standard is confusing. Suggests saying instead, “including a description of how the agency is working with collateral resources to provide a continuity of care.” (From licensed child-placing agency)

Response: Agree. Have revised to read: “Include a description of how the agency is working with the community resources to provide a continuity of care.”

Rationale: To clarify standard by using simpler language.

Comment: 22 VAC 130-212, C, 6 - Standard requires agencies to include a description of the programs and services that will help the child 16 or older with transition from foster care to independent living. Suggests adding, “when appropriate” to the end of this sentence. (From licensed child-placing agency)

Response: Agree. Standard revised.

Rationale: Foster Care policy and the Code of Virginia require this for all children in foster care, ages 16 and older. Adding “when appropriate” should not affect the intent of the standard. Providing independent living skills may not be appropriate for certain children.

Comment: 22 VAC 40-130-213, A - Quarterly Reports in Foster Care - States that standard indicates that these reports are not written until after 5 months into the placement. This is not truly a quarterly report and 5 months is too long to wait. Suggests changing to “shall be completed quarterly beginning with the date of placement.” This would make it easier to track and plan. (From licensed child-placing agency)

Comment: 22 VAC 40-130-213, A - Quarterly progress reports in foster care - “Progress reports shall be completed quarterly beginning with the date of the service plan.”

Recommends that the time frame for completion of these reports coincide with the requirements for treatment foster care. (From licensing staff person)

Response: Agree. Times frames will be consistent. Service plans will be due within 45 days of placement. Progress reports will be due within 90 days of placement.

Rationale: Where possible, consistency should be maintained in the foster care chapter and the treatment foster care chapter.

Comment: 22 VAC 40-213, A, 3 - Progress report requires that behavioral issues be addressed and plans for addressing them. Suggests adding, “when appropriate” at end of sentence. (From licensed child-placing agency)

Response: The department has revised this section to more clearly connect the progress report with the service plan.

Rationale: It is necessary to correlate the progress report standards with the service plan requirements.

Comment: 22 VAC 40-130-213, B - “The fourth quarterly progress report shall address the above requirements and evaluate and update the service plan for the upcoming year.” Recommends that this also be consistent with that required for treatment foster care. (From licensing staff person)

Response: Agree. Standards are revised to be consistent.

Comment: 22 VAC 40-130-221 - Medical Care - Add the phrase that the child placing agency shall provide or arrange for a child to receive psychological and psychiatric care in consultation with DFS social worker. (From public department of social services)

Response: Agree.

Rationale: Custodial agency should be involved in this decision.

Comment: 22 VAC 40-130-223 - Other Responsibilities of Agency - Spending money/allowance should be specified in the child's plan. (From public department of social services)

Response: Agree.

Rationale: This will allow the child, the agency staff and the foster parents to be aware of specific amount child will receive.

Comment: 22 VAC 40-130-240, C - Standard requires that the agency not discharge a child without the knowledge, consent and notification of the custodial agency. Suggests that the word "consent" be deleted because the placing agency may not always be in agreement with the child placing agency discharges a child. (From public department of social services)

Response: Changed "consent" to requirement that the agency plan the discharge with the placing agency.

Rationale: The placing agency that has legal custody of the child must be involved in discharge planning in order to make appropriate plans for the child.

Comment: 22 VAC 40-130-261, B. - Ongoing Training for Foster Parents - Many foster parents are studied and approved to care for newborns only. The required topics for training are not relevant for those parents. If ongoing training is required for these families, could training topics that are more age appropriate be offered, i.e., attachment and bonding, caring for children with pre-natal drug exposure, etc. (From licensed child-placing agency)

Response: Agree.

Rationale: Standards need to address the training needs of all foster parents.

Comment: 22 VAC 40-130-270, G - Standard requires a medical exam on all members of the foster parent applicant household no earlier than six months prior to approval. Recommendation is to change this to no earlier than 12 months, which will make it consistent with requirements for adoptive home studies. (From VALCPA)

Response: Agree.

Rationale: Allows more flexibility and is consistent with adoptive parent home study requirements.

Comment: 22 VAC 40-130-270, J - The Foster Family and Foster Home Study - If the prospective foster parent applicant has not lived in Virginia for the past 10 years then a FBI criminal record check should be completed. (From public department of social services)

Response: Agencies may require FBI checks through the State Police.

Comment: 22 VAC 40-130-270, J - States that criminal record reports should be received on all persons over the age of 18 living the applicant's home. The current standard just requires these of the foster parent applicants. (From VALCPA)

Comment: Criminal history reports and sworn disclosure statements should be received on all adults living in the home and agencies should not approve homes if the other adults living in the home have a criminal record. This would be consistent with the previous standard, which requires child abuse and neglect registry checks on the applicants and other adults in the home. (From licensed child-placing agency)

Response: Standard revised to refer to the Code of Virginia and the applicable regulation promulgated by the State Board of Social Services.

Rationale: It is not necessary to repeat the requirements of law or of another regulation that pertains specifically to criminal record checks and child abuse and neglect checks.

Comment: 22 VAC 40-130-270, M, 1 - This standard requires the foster parent applicants to have sufficient income to assure continuing maintenance of the family. If there is an amount in the agency's monthly payment above that required for the needs of the child, it may be counted as income. Comment states that the last sentence is confusing. (From licensed child-placing agency)

Response: Agree. The last sentence has been deleted.

Rationale: The requirement does not apply to the initial home study of foster parent applicants.

Comment: 22 VAC 40-130-270, N - The new agency should be required to share with public agency the reason why the family is no longer with the 1st agency. We recommend that a copy of the home study from 1st agency should be made available to DFS. (From public department of social services)

Response: Do not agree.

Rationale: This information is protected under privacy laws of Virginia and can only be released to others with written permission of foster parents.

Comment: 22 VAC 40-130-270, P, 5 - Standard requires agency to assess the foster parents' willingness to assist in the service plan at the time of the initial home study. States that this is unrealistic and inaccurate to require this before approval and before a child is even placed in the home. (From licensed child-placing agency)

Response: Do not agree.

Rationale: The applicant's willingness to assist and cooperate can be discussed and assessed as part of the initial home study.

Comment: 22 VAC 40-130-270, Q, 4 - Recommends that we add the phrase: Foster parents shall have a written evacuation plan in case of emergencies and shall rehearse the plan with children every six months, provided they are of sufficient age to understand. (From licensed child-placing agency)

Response: The second part of the standard requires that the plan be reviewed with children within 48 hours of placement. This has been revised to allow the review to be with children who are old enough to understand. However, foster parents should rehearse the evacuation plan with children, regardless of the ages of the children.

Rationale: Clarifies standard.

Comment: 22 VAC 40-130-270, Q, 10 - Standard requires that there be separate beds for children except that two siblings of the same sex may share a double bed. Suggests adding "if deemed appropriate" to end of sentence. (From licensed child-placing agency)

Comment: 22 VAC 40-130-270, Q, 10 - Siblings of the same sex may not share a double bed if there is history of sex abuse (victim/perpetrator) for either sibling. (From public department of social services)

Response: The standard has been revised to say, "if appropriate."

Rationale: This decision should be between the child-placing agency and the foster parents.

Comment: 22 VAC 40-130-271, A, 3 - Foster Home Agreement - Which agency has the right to remove the child when it considers it in the child's best interest? When the therapeutic foster care agency does, then it must notify the placing agency in advance. (From public department of social services)

Response: A standard has been added to 22 VAC 40-130-223 to require the licensed agency to consult with placing agency when moving a child from one home to another, whenever possible.

Rationale: The licensed agency has the right to move the child without the custodial agency's permission, but prior consultation is good practice.

Comment: 22 VAC 40-130-272 - Re-evaluation of Foster Homes - Notification of the public placing agency, if the therapeutic foster care agency at any time removes a child from a foster home. (From licensed child-placing agency)

Response: Standard added to Section 22 VAC 40-130-223 & 22 VAC 40-130-700 to require prior consultation with placing agency.

Rationale: See above rationale.

Comment: 22 VAC 40-130-272, F - If the agency makes a recommendation regarding further training needs of the foster parents, it should consult with the foster parents regarding what training the foster parents think they need. (Public department of social services)

Response: Added to 22 VAC 40-130-261 and 22 VAC 40-130-790. Training for foster parents.

Rationale: Agree that agencies need to consult with foster parents.

Comment: 22 VAC 40-130-272 - Add a G. - “That the agency as part of the re-evaluation shall summarize the number of children placed in the home during that period and the reason for the removal.” (From public department of social services)

Response: Reason for removal added to 22 VAC 40-130-272.D and to 22 VAC 40-130-820.D.

Rationale: It is necessary that the licensed agency evaluate this information in its continued work with the foster parents.

Comment: 22 VAC 40-130-280, C, 3 - Foster Care Records - Delete the proposed “3.” Regarding routine and emergency medical and dental care, the following are Fairfax County’s procedures: Suggested revision of this standard: (Fairfax County DFS) case manager cannot give the therapeutic foster care agency blanket consent for emergency medical and surgical treatment and/or hospitalization or for travel and photography. Fairfax DFS has the TFC provider sign a statement that the TFC Provider will:

Re: routine and emergency medical and dental care:

“Cooperate with the Placing party (DFS case manager) in seeing that the child receives routine medical/dental care treatment and shall act immediately in medical/dental emergencies, notifying the placing party as soon as possible in emergency situations and obtaining permission for planned special medical/dental care and expenses.

The TFC Provider shall obtain regular, general, routine medical/dental care for the child. In the event of a “medical emergency,” take the child immediately to a medical facility and obtain authorization of emergency medical treatment from a Fairfax County judge or magistrate. To obtain such authorization during normal business hours, contact the DFS social worker or duty worker at (703) 324-7639. To obtain such authorization outside of normal business hours, contact Fairfax County Police Operations at (703) 691-2131 and request the Fairfax police to page DFS’s After-Hours Unit.”

Re: out of state travel and participation in special activities:

“The Fairfax DFS case manager must give permission for any out of state travel or participation in special activities.”

Re: publicity releases the following contractual language applies:

“The TFC Provider shall comply with the confidentiality provisions of VA Code 2.1-756 (Spp.). This includes, among others, not photographing the child/youth placed by the parent(s) or the legal guardian, as the case may be. It further precludes audio-visual recording of the child/youth as well as prohibits the child’s/youth’s participation in any research projects without the written permission of the parent(s) or the legal guardian, as the case may be.” (From public department of social services)

Response: Standards cannot be as specific as this locality’s agreement. Standards are added to require agencies to receive permission for medical/dental routine and emergency care, out-of-state travel, and fund raising in the placement agreement.

Comment: 22 VAC 40-130-280, C, 4, 5, 6, 7 - These items (including child’s birth certificate, ongoing school and educational records, ongoing medical and dental treatment records, and clinical treatment progress notes and evaluations) would be burdensome to obtain, and not particularly useful in nature, for the short duration of our placements. We are particularly concerned that if, in order to be in compliance with regulations, we are required to obtain a birth certificate copy in order to legally place a youth, our emergency placement activity will be brought to an abrupt halt. We can see the wisdom of maintaining such documents in foster care record for children and youth in longer-term foster care situations. We would suggest that 22 VAC 40-130-280-C, 4,5,6,7 be amended to read that these items will be in place in the record within sixty to ninety days of the initiation of the foster care placement. Or, that an exception be written in stating that these items are not required for placement of less than thirty days. (From licensed child-placing agency)

Response: Agree. Standards have been revised to allow exceptions for short-term placements.

Rationale: See comment.

Comment: 22 VAC 40-130-280, C, 7 - Include the concurrence from DFS regarding the inclusion of the clinical treatment including progress notes and psychological or psychiatric evaluations. (From public department of social services)

Response: Agree.

Rationale: Custodial agencies should be consulted when clinical treatment is considered for a child in their custody.

Comment: 22 VAC 40-130-280, G - Add the language “... and notification to DFS.” At the end of the new proposed sentence. (From public department of social services)

Response: New standard not needed.

Rationale: Notification of custodial agency is required in cases of abuse or neglect complaints in foster homes in 22 VAC 40-130-480.

PART V - ADOPTION SERVICES

Comment: Orientation & Training - In the proposed standards, orientation and training is required for subsequent adoptive placements, but training is not required for initial adoptive applicants. We recommend applying the training requirement of public agencies for private agencies. This standard requires that the adoptive applicant shall attend any orientation and training required by the agency and that the agency should provide at a minimum some basic orientation to the adoptive applicant. (From licensed child-placing agency)

Response: Agree. Standards have been added to require basic orientation and training for adoptive applicants.

Rationale: It is critical to prepare adoptive applicants for such a major decision as adopting a child. Agencies also need to provide applicants with information about the practices of the agency, fees for adoption and laws related to adoption.

Comment: 22 VAC 40-130-290, A, 2 - Program Statement - Child-placing agencies shall have a statement describing their services including: An open admissions policy if federal or local social service agency funds are involved, et.seq. What exactly must be included in the summary of the agency's policy? (From licensed child-placing agency)

Response: This does not require a change in the standards.

Rationale: Clarification will be provided in the guidance material.

Comment: 22 VAC 40-130-290, A, 6 - This standard requires as part of the adoption agency's program statement a policy that race shall not be the determining factor in determining the best placement for the child. (The Multi-Ethnic Placement Act does not forbid race as one of several factors to be considered in the placement for a specific child. It forbids holding a child in care for a racial matching.) (From licensed child-placing agency)

Response: Do not agree. See response to 22 VAC 40-130-200.A, 2.

Comment: 22 VAC 40-130-290, A, 6 - The statement shall describe the population to be served and include a list of services, including adoptive family preservation services, provided to children, families and adoptive families prior to the final order of adoption. This is the first of many times where biological parent is changed to "legal" parent. It should say both because both may exist and neither should be excluded. (From licensed child-placing agency)

Response: Agree to change all references to legal parents.

Rationale: Clarification needed throughout the regulation.

Comment: 22 VAC 40-130-300, B - Services to legal parents contemplating placing their child for adoption. Recommendation to change the word "firm" to "informed" in the following standard: "While parents may have decided to place their children for adoption before coming to the agency, counseling sessions shall be offered to assure that the decision was not made under duress and the decision is firm."

Comment: 22 VAC 40-130-300, B - Remove “the decision is firm.” It is not intended to be firm at this point in the process. Suggest “decision is informed.” (From VALCPA)

Response: Agree to change.

Rationale: Agencies can never guarantee that a parent’s decision to give children up for adoption is firm. The expectation is that agencies assure that parents are informed of all options before making this decision and understand the meaning of this decision.

Comment: 22 VAC 40-130-301. Authority to place. A. 1.e. A placement agreement signed by the local department of social services having jurisdiction when a non-custodial agreement has been signed between the parent or legal guardian and the local department or another public agency. Recommends that this be deleted from the adoption section. This does not occur in adoptive placements. (From licensed child-placing agency)

Response: Agree.

Rationale: Not appropriate for adoption placements.

Comment: 22 VAC 40-130-310, C - Social History - Add following additional requirements that the agency must document:

Who in the family knows about the plan and goal?

What relatives have been contacted for possible foster care placement?

Description of birth parents’ personality, life style, childhood

Description of the type of family the birth parents would like to have child place with

Child’s placement history with dates and names of caretakers

Description of child’s attachment needs. (From licensed child-placing agency)

Response: Agree. Standards have been added addressing these items.

Rationale: The social history, written about a child to be placed for adoption, is the main source of background and family information for the child. Adult adoptees will wish to learn as much as possible about their background and this document is critical. It is important that the social history be as complete as possible.

Comment: 22 VAC 40-130-310, C, 2 - Temporary Foster Care Prior to Adoption for Children under One Year - Recommend that the social history should be completed prior to placement and received by the adoptive parents to enable them in their decision making process. (From licensed child-placing agency)

Response: Standard already requires this be done before adoptive placement agreement is signed. Have added standard to this section requiring agencies review the social history with adoptive parents.

Comment: 22 VAC 40-130-312, F - Service Plans - Progress Summaries - Kinship issues should be added. For example, plan should include exploration of relatives as placement resources. (From licensed child-placing agency)

Response: Agree. Added to 312.B.1 - Service Plan requirements and to 312.F - Progress reports.

Rationale: This comports with current state policy to search for a child's relatives as potential resources for permanent placement.

Comment: 22 VAC 40-130-320, B - After approval: "The selection of a particular child for the adoptive family shall be in the best interest of the child . . ." based on a thorough assessment of the child's needs, including proximity to critical relationships with whom the child will maintain contact. - (Add language that is underscored.) (From licensed child-placing agency)

Response: Agree to add, "based on thorough assessment", but the phrase "including proximity to critical relationships." is one of several areas to consider; therefore, this phrase is not added to the standard.

Rationale: A thorough assessment of the child's needs is necessary to determine the best family to adopt the child.

Comment: 22 VAC 40-130-320, D - After approval: Add - "identifying information can be provided with written consent of the parents." (From licensed child-placing agency)

Response: Do not agree to add to standard.

Rationale: Clarification will be provided in the guidance material. Confidentiality laws and disclosure laws govern this standard.

Comment: 22 VAC 40-130-320, E - After approval: items to be considered when selecting an adoptive home. Standard states that "The prospective family shall be permitted to decide whether or not to accept a child. Refusal of a child shall not be the sole basis for excluding a family from consideration for another child." Clarification is needed regarding refusal of a child being the sole basis of excluding a family from consideration for another child. (From licensed child-placing agency)

Response: Standard does not need to be changed. Clarification provided to the individual making the comment.

Rationale: The intent of this standard is to prevent agencies from excluding families from future placements who decide not to accept children offered to them.

Comment: 22 VAC 40-130-330, A - Direct Placement - Is this required in legal risk agency placements? (From licensed child-placing agency)

Response: Yes. No change is necessary to standard.

Rationale: Clarification will be provided in guidance material.

Comment: 22 VAC 40-130-340 - Adoptive Placement of Older Children - What does “older” mean? (From licensed child-placing agency)

Response: The standard has been clarified to mean children with the ability to understand.

Rationale: The intent of this section is to require agencies to help prepare the child who is old enough to understand what is happening to him for possible adoptive placement. This will be further clarified in the guidance material.

Comment: 22 VAC 40-130-340 - Additional Provisions - How can these requirements be met in the case of an international adoption? (From licensed child-placing agency)

Response: These requirements are not applicable in intercountry adoptions.

Rationale: Exception will be added to this standard.

Comment: 22 VAC 40-130-340, C - “The agency shall document in the narrative contacts and services provided to the child which demonstrate the agency’s efforts to prepare the child for adoptive placement.” Supports good practice - Add the following:

Attachment issues

Child’s needs for contact with current or prior caretakers and birth relatives, including siblings

Agency shall also prepare the adoptive family for the child identified, including expected behaviors and the life long impact of the child’s history. (From licensed child-placing agency)

Response: Agree.

Rationale: The topics recommended are important to prepare the older child for possible adoptive placement.

Comment: 22 VAC 40-130-350, F - Supervisory Visits and Adoptive Family Support and Preservation Services - “The agency is legally responsible for the child until the final order is entered.” Does this mean that Fairfax DFS is no longer responsible, that the private child-placing agency is responsible?

In keeping with the above question, refer to page 55, 22 VAC 40-130-310, H, 2. Who pays if “... the agency shall arrange continuing services, either directly or by referral”? (From public department of social services)

Response: Standard 350.F applies only to licensed child placing agencies with legal custody of child. In the Fairfax case, Fairfax Department of Family Services would still retain legal custody until the final order of adoption is entered. In 22 VAC 40-130-310.H.2 - payment is worked out between agency and adoptive parents. Intent of standard is not to require private agencies to cover this service at no charge.

Comment: 22 VAC 40-130-350, G, 1-4 - Supervisory Visits - Add: “the degree to which the family is mastering the unique psychological tasks of adoptive parents (attachment, identity, control, etc.)” (From licensed child-placing agency)

Response: Do not agree. The proposed standards are broad enough to cover the above area as well as others that agencies feel should be added.

Rationale: Agencies may include this in their home studies. Does not need to be a specific requirement.

Comment: 22 VAC 40-130-350, J - “The agency shall document efforts to assure that the adoption petition is filed.” Wouldn’t “ensure” be a better (less ambiguous word)? (From licensed child-placing agency)

Response: Agree. Will correct this where appropriate throughout regulation.

Rationale: Assure and ensure are considered synonyms, but “ensure” conveys the understanding that an action will take place.

Comment: 22 VAC 40-130-350, J - This shall not apply if the family has a Final Order from another country and is refinalizing. (Many couples in this situation delay. We have no means to insist on quarterly visits and they are not willing to pay for extra visits.) (From licensed child-placing agency)

Response: Agree.

Rationale: This is not intended to apply to intercountry adoptions that are finalized in another country.

Comment: 22 VAC 40-130-350, K - Is the County DFS giving custody to the therapeutic foster care agencies now approved for adoption placements? Reference: “When an agency places a child in its custody in an adoptive home....” (From public department of social services)

Response: No. Does not apply until private agency has received legal custody. Local agencies usually retain custody of children until final order.

Comment: 22 VAC 40-130-365, 4, & 4 c - Adoption Assistance - In keeping with other changes in the revisions, shouldn’t “birth parents” be changed to “legal parents?” (From licensing child-placing agency)

Response: Legal parents are now being changed to birth parents throughout.

Comment: 22 VAC 40-130-370, A - Involuntary Termination of Parental Rights - Will the private child-placing agency, e.g. People Places, if licensed for adoption purposes, be responsible for the involuntary termination of parental rights petitioning the court, etc.? (From public department of social services)

Response: No, only if they have legal custody of child. This is still the responsibility of the custodial agency.

Comment: 22 VAC 40-130-380 - Interlocutory Order - Why change parent to parents? How about parent(s)? (From licensing child-placing agency)

Comment: 22 VAC 40-130-380, A, 1 - Standard states that “The adoptive parents are financially able to care for the child.” Recommendation is to change the word “parents” to “parent(s)” so as not to exclude single adoptive parents. (From licensing child-placing agency)

Response: Intent is not to exclude single adoptive parents; therefore, the standard has been revised to “parent or parents.”

Rationale: Clarification.

Comment: 22 VAC 40-130-390, A - Agency Fees - Fees may vary depending on the needs of the child being placed. Stating fees on applications may discourage families. Many agencies offer subsidies for families who adopt minority children or special needs children. Note: This only applies to license application. (From public department of social services)

Response: Standard clarified. This standard refers to the agency’s application for licensure.

Rationale: Fees are to be attached to this and submitted to licensing. .

Comment: 22 VAC 40-130-390, A - Will the private agency also be able to bill the County as well as the adoptive parents? (From public department of social services)

Response: This must be worked out between the local department of social services and private agency.

Comment: 22 VAC 40-130-400, B - Adoptive Home Study - States “all” family members must be interviewed. Replace with “all household members.” (From licensing child-placing agency)

Comment: 22 VAC 40-130-400, B - The agency shall conduct interviews with all family and household members. Recommendation is to delete the word “family” and just say “all household members”, which will also include the family. (From VALCPA)

Response: Agree to change.

Rationale: Family is not defined and family members will be included in all household members in the home.

Comment: 22 VAC 40-130-400, C - "Minor and adult children of each adoptive applicant living outside the home shall be interviewed." This sounds like the adoptive applicant is living outside of the home. Should it be changed to "Each adoptive applicant's minor and adult children living outside the home shall be interviewed?" (From licensing child-placing agency)

Response: Agree.

Rationale: Clarification needed.

Comment: 22 VAC 40-130-400, F - Can "his designee" be a nurse practitioner? (From licensing child-placing agency)

Response: Yes

Comment: 22 VAC 40-130-400, F - Medical - Specifically require HIV/AIDS testing for applicants. An evaluation of the current physical AND mental health status should be included on the medical form. (From A.D.O.P.T. committee)

Response: The law does not permit agencies or regulations to require HIV/AIDS testing for applicants. The regulation requires an evaluation of the current health of the individual. This includes physical and mental health. This will be discussed in the guidance material.

Comment: 22 VAC 40-130-400, F, 4 - This standard requires the medical examination of the adoptive applicants to assess the life expectancy of the applicants. Something has been left off of the end of the sentence. We recommend adding... If normal life expectancy is altered, the home study should discuss the possible impact to any child placed in the home. A plan for childcare and the financial resources of the family should a parent become incapacitated shall be discussed and documented. (From licensing child-placing agency)

Response: Agree. Standard has been revised to add recommended language.

Rationale: It is true that this needs to be discussed with the applicants and plans in place if the decision is made to place a child with them.

Comment: 22 VAC 40-130-400, H - Criminal record clearance reports and sworn disclosure statements shall be received on each applicant pursuant to 63.1-198.1 of the Code of Virginia prior to approval. Recommendation is to add that these reports be received on all household adult members. (From VALCPA)

Response: Standard revised to refer to the Code of Virginia and applicable regulations for criminal record and child abuse and neglect checks.

Rationale: It is not necessary to repeat the requirements of law and where covered in another regulation.

Comment: 22 VAC 40-130-400, H - "The contents and copies of criminal record reports ... shall not be shared ... except as permitted by state or federal law." Can this be changed to include appropriate foreign authorities when the home study is for a foreign adoption? E.g. "...

except as permitted by state or federal law, by the laws of the country in which the person named in the report has applied for adoption, in the case of an inter-national adoption.” (From licensing child-placing agency)

Response: See response above.

Comment: 22 VAC 40-130-400, J - “The agency worker shall see the marriage license for couples...” Shouldn’t the worker see the marriage certificate? A license is permission to marry, but not proof of marriage.

Response: No, the marriage license is sufficient documentation.

Comment: 22 VAC 40-130-400, K - Employment - Delete using personal knowledge of agency staff member as verification for employment. (From A.D.O.P.T. committee)

Response: Agree.

Rationale: It is inappropriate and unprofessional for an agency staff member to verify an applicant’s employment.

Comment: 22 VAC 40-130-400, O - will not use corporal punishment ...or give others permission to do so. Should read, “will not use corporal punishment... nor give others permission to do so.” (From licensing child-placing agency)

Response: Agree to correct.

Comment: 22 VAC 40-130-401, A, - Additional Areas to Assess in the Home Study - “The agency shall conduct an assessment of the motivations, expectations, commitment and abilities. The agency shall assure that the following areas are covered in its assessment and document the basis for its conclusions.” The first sentence is incomplete. Should it end “of the adoptive applicants?” In the second sentence, “ensure” is, as noted earlier, less ambiguous than “assure.” (From licensing child-placing agency)

Response: Agree. First sentence completed by adding “of the adoptive applicants.” “Assure” changed to “ensure.”

Comment: 22 VAC 40-130-401, A, 4 - “Discipline of children to include the discipline the applicants’ received as children.” The apostrophe should be removed. This is not a possessive. (From licensing child-placing agency)

Response: Agree to correct.

Comment: 22 VAC 40-130-401, B, 4 - Delete B.4 in 22 VAC 40-130-401 (Additional Areas to Assess) Standard requires assessment of adoptive applicant’s marriage and its ability to continue successfully without a child. It is not clear what the purpose of this question is or how such an assessment would be made. (From licensing child-placing agency)

Response: Agree. Standard has been deleted.

Rationale: Standard is not clear and it would be difficult for agencies to assess this area.

Comment: 22 VAC 40-130-401, B, 5 - Please add “The special needs of the child” to the “critical issues in adoption to include: a. - f. “g. The special needs of the child, if applicable.” (From public department of social services)

Response: Agree. Standard added to require assessment and discussion with adoptive applicants of their understanding of the special needs of the adopted child.

Rationale: This is especially important in the adoption of older children.

Comment: 22 VAC 40-130-401, B, 5, a - Say instead: “talking with the child about adoption throughout their lifetime.” (From licensing child-placing agency)

Response: Agree.

Rationale: This is a better way to express one of the critical issues of adoption.

Comment: 22 VAC 40-130-401, B, 5, e - Add: “and commitment to making those linkages, ability to delay gratification and ability to maintain life long commitments in the face of adversity. (From licensing child-placing agency)

Response: Agree to add ability to maintain life long commitment to a child. Agencies may add additional items to their orientation for adoptive parents.

Comment: 22 VAC 40-130-401, D - Safety Standards - Add the requirement for having a written fire escape plan. (From licensing child-placing agency)

Response: Agree to add requirement that home have a written emergency escape plan, but this department is not authorized to enforce fire safety standards.

Rationale: The Department of Housing and Community Development through the State Fire Marshal’s office is responsible for enforcement of fire safety regulations.

Comment: 22 VAC 40-130-401, D, 2 - Requires that sleeping areas have smoke detectors and the home must have a fire extinguisher. This standard must be deleted. (From licensing staff person)

Response: Agree for reasons cited above.

Comment: 22 VAC 40-130-401 - Additional Areas to Assess the Home Study - 8. The home shall keep cleaning supplies and other toxic substances stored away from food, locked, and out of the reach of children. (From VALCPA)

Response: Locked has been changed to secured. The standard has been revised to allow adolescents to have access to cleaning supplies, if appropriate.

Rationale: This standard was too restrictive as previously worded.

Comment: 22 VAC 40-130-402 - Appeal Process - Is not in proposed standards and should be addressed. (From licensing child-placing agency)

Response: Do not agree. The standard requires agencies to offer applicants an interview to explain the disapproval of their home to them.

Rationale: The option of an appeal process is available to agencies without regulatory oversight.

Comment: 22 VAC 40-130-403 - Adoptive Placement Agreement

#2 - The statement that the agency is legally responsible for the child until the final order and may remove the child if it is necessary for the child’s well-being.” Recommends deleting this and substituting #6 from the adoptive placement agreement used by local departments of social services (in the adoption policy manual). See attached. (From VALCPA)

Comment: 22 VAC 40-130-403 - Adoptive Placement Agreement

#2 - “may remove the child if it is necessary for the child’s well-being” is too broad. Should read as law is written: May remove if child is subject to unwholesome influences or to neglect or mistreatment. (From licensing child-placing agency)

Response: Agree. Standard revised to include language from the placement agreement in the department’s adoption policy manual.

Rationale: The recommended language is based on Section 63.1-220.5 of the Code of Virginia.

Comment: 22 VAC 40-130-404 - Home Study Updates - Add updated Criminal Records, CPS Records and DMV. (From licensing child-placing agency)

Comment: 22 VAC 40-130-404, A - Add: 8. - New clearances shall be obtained. (From licensing child-placing agency)

Response: Standards now refer to the Code of Virginia and applicable regulations governing background investigations. The current law and regulation do not require updates to the criminal record and child abuse and neglect checks.

Comment: 22 VAC 40-130-410, D - Parental Placement Adoptions - What if birth parents refuse? What if one parent is unavailable? Change to: “require at least one birth parent receives counseling.” (From licensing child-placing agency)

Comment: 22 VAC 40-130-410, D - Although this is the best way to do this, it is sometimes absolutely not possible or feasible. Change to “every effort shall be made to insure that...” Add: These efforts shall be documented in the case record. (From licensing child-placing agency)

Comment: 22 VAC 40-130-410, D - If the birth parents have not received counseling regarding these issues, the agency shall provide it. Add, “when the birth parent(s) are available”

so the statement reads as follows: When the birth parent(s) are available and have not received counseling regarding these issues, the agency shall provide it. (From VALCPA)

Response: Agree. Standard added to permit agencies to document reasons why counseling could not be provided to one or both birth parents.

Rationale: The expectation of the standard is that agencies will provide this counseling or make every effort to do so. However, it is not always possible for the agency to control the actions and willingness of birth parents to receive counseling.

Comment: 22 VAC 40-130-410, E - The face to face contact with birth parents shall take place on a different day from the day of the meeting to exchange identifying information. When the face to face contact with the birth parent(s) shall take place on a different day from the date of the meeting to exchange identifying information, the agency shall document why. (From VALCPA)

Comment: 22 VAC 40-130-410, E - Conducting face to face interviews with birth parents on different days from the date of the exchange of identifying information meeting may be unrealistic if the birth/adoptive parents live out of town. What is the purpose of this change? (From licensing child-placing agency)

Response: Agree. Standard added to require agencies to document reasons why this could be done and show the efforts of the agency to try to have the face to face interview on a separate day.

Rationale: The reason for this requirement is to give the birth parents more time to consider their decision to place their child for adoption. After having the face to face interview where agencies discuss the alternatives to adoption, many times birth parents are immediately taken into the meeting with the prospective adoptive couple to exchange identifying information as permitted by law.

Comment: 22 VAC 40-130-410, G - Does this mean no “designated adoptions”? (From licensing child-placing agency)

Response: Section 63.1-220.2 requires that any adoption where the birth parents have designated the adoptive parents to adopt their child to be handled as a parental placement adoption. This will be clarified further in guidance material.

Comment: 22 VAC 40-130-420, A - Adoption Records - The agency shall maintain a case record for each child, the legal family and the adoptive family. Delete “adoptive family” so the statement reads as follows: The agency shall maintain a case record for each child and the legal family. Another comment objected to the use of “legal parent” because there may be both a legal father (married to the mother) and a biological father. Adoptive family is the legal family. (From VALCPA)

Response: Use of legal family has been deleted.

Rationale: Use of term is confusing to agencies.

Comment: 22 VAC 40-130-420, B, 1 - The child's record shall include identifying information including the child's birth certificate, birth date, place of birth, sex, race, height, weight, hair color, eye color, and identifying marks. The child's record should include the child's "original" birth certificate. (From VALCPA)

Comment: 22 VAC 40-130-420, B, 1 - Adoption Records - Add: "original" birth certificates. (From licensing child-placing agency)

Response: Standard revised to require the original birth certificate whenever possible.

Rationale: In most instances, intercountry adoption agencies are unable to receive the original birth certificates on children.

Comment: 22 VAC 40-130-420, C - The Legal Family's Record - Should there be some discussion about two records, a counseling record and an adoption planning record, per recent directives from Doris Jenkins? (From licensing child-placing agency)

Response: Section 22 VAC 40-130-550. "Disclosure of Information" has been revised to address this issue.

Rationale: This comment relates to the adoption disclosure laws and recent advice from legal counsel related to the release of non-identifying information to the adult adoptee from the birth parent's record.

Comment: 22 VAC 40-130-420, C, 1 - Social Security Number - Some representatives from the private agencies stated that Social Security numbers cannot be required from applicants under the Privacy Protection Act. (From VALCPA)

Response: Agree. Standard revised to add, when possible, after requirement for Social Security number.

Rationale: The Code of Virginia allows individuals to refuse to release their SS#.

Comment: 22 VAC 40-130-420, C, 2 - "Names and addresses of grandparents, close relatives and siblings;" Whose? One assumes this refers to the child, but it is not clear, as it's under the heading "Legal Family's Record." Also: what constitutes a "close relative?" A relative to whom the child is emotionally/physically close or a relative who is closely related by blood? This requirement needs further definition. (From licensing child-placing agency)

Response: Agree. This standard is in the wrong section and has been moved under the child's record. A relative is any known person related to the child by blood.

Rationale: This will be clarified in the guidance material.

Comment: 22 VAC 40-130-420, D - Family's Record: Should say birth and legal family. Add: social history, description of childhood, birth parents' relationship to each other, who knows about the placement in the family and what was their response. (From licensing child-placing agency)

Response: Use of legal family discontinued. Agree to add recommendations of additional information to be captured in the birth parents' record.

Rationale: This information is critical for the adoption agency to capture. This information is important to the adult adoptee who requests non-identifying information from the record.

PART VI - INTERSTATE AND INTERCOUNTRY PLACEMENTS

The following comments are from several licensed child-placing agencies that provide intercountry adoptions:

1. Comment: 22 VAC 40-130-450, A - Agency Responsibility for Adoption and Foster Care Services On Behalf Of An Out-of-State Agency - "Requires ICPC approval before supervising placement of an out-of-state child." How do we handle this requirement when the child was placed with an American family while they were overseas, and they subsequently moved to Virginia? Also, I assume this does not apply when the adoption was finalized overseas but the sending agency will require post-placement supervision and reports.
2. Comment: 22 VAC 40-130-450, B - "Requires a supervision agreement with the out-of-state agency." Again: how do we comply with this requirement in the above type of case? And is it mandatory when supervision is being carried out after a final decree of adoption from overseas?
3. Comment: 22 VAC 40-130-450, D - "Requires that supervisory reports be sent to other agencies only through ICPC." What is the reason for this? We have found that it takes some interstate offices months to forward the reports to the sending agency. This delays adoption finalizations, citizenship, reporting requirements to third entities, such as foreign countries, etc. Also, I assume this does not apply to adoptions finalized overseas and being re-finalized in Virginia. And that it does not apply to sending the reports to agencies outside of the country.(?) The standard needs further clarification.
4. Comment: 22 VAC 40-130-450, D - Interstate Compact - For adoption services on behalf of children born in other countries. Do agencies need to obtain permission to send supervision reports to out of state foreign liaison agencies when the country offers a final order of adoption?
5. Comment: 22 VAC 40-130-450, F - Needs to clarify that the written approval required is the one "referred to in 'E' above."
6. Comment: 22 VAC 40-130-450, G - "Requires notification of a placement made without ICPC approval." Does this apply in cases such as the child placed with a family while they were living overseas who then returns to Virginia to finalize the adoption?
7. Comment: 22 VAC 40-130-450, I - Currently, families are required to sign a form which verifies that they are informed about Interstate Compact requirements, which is retained in the record. Is it necessary to also mention this in the home study? This seems unnecessary.
8. Comment: 22 VAC 40-130-450, J - Do you really mean a home study update needs to be done during the supervisory period? Does this apply when the adoption is to be finalized in the other state or just in Virginia?

9. Comment: 22 VAC 40-130-452 - Intercountry Adoptions - We at Welcome House have some strong concerns regarding some of the proposed changes in the standards in regards specifically to Intercountry Adoption. I would be happy to discuss them at length with you at your convenience or to be part of an inter-agency group that could discuss these with you.

10. Comment: 22 VAC 40-130-452 - RE: International Adoption Standards - Supports the proposed standards.

11. Comment: 22 VAC 40-130-452 - I reviewed the proposed Intercountry Standards and am happy we are putting some teeth into intercountry adoption. Whether we can obtain everything we want from overseas is a question. An explanation could be provided by an agency as to why a standard is not met when that is a case.

For instance, 10-130-452, D, 3. We may not be able to obtain a statement from China or India that the information provided is complete. The Chinese Adoption Center provides minimal information on babies and Indian agencies interpret their Supreme Court decision as forbidding them to provide information about the child's relatives.

We, the adoption agencies, need to try to obtain pertinent information but also point out to the adoptive parents when there are evident gaps.

12. Comment: 22 VAC 40-130-452 - These responsibilities mix roles of agencies who are placing agencies and those that are networking agencies. The standards need to reflect these distinct roles.

13. Comment: 22 VAC 40-130-452, D, 1 - This is the country's responsibility and INS. The only thing available to agencies is medical information.

14. Comment: 22 VAC 40-130-452, D, 2 - There is no generalized "credentials." They vary greatly. Therefore, this isn't worth the paper it's written on.

15. Comment: 22 VAC 40-130-452, D, 4 - This never occurs. How would we make this one happen?

16. Comment: 22 VAC 40-130-452, D, 4 - Only an agency working directly with resources in other countries can comply with these provisions. If that's what is meant by "providing intercountry services", it should be clarified. Otherwise, perhaps "D, 5-8" could be listed first, The agency record shall include: with items in "D, 1-5." Then a new "E" could contain the old "D, 1-4" items. It could say, An agency working directly with resources in other countries shall comply with the following provisions:

17. Comment: 22 VAC 40-130-452, D, 6, f - Where is this written? Under what circumstances are intercountry children eligible? If it is possible they are eligible, how can we say this?

18. Comment: 22 VAC 40-130-452, E, 1 - From whom would this be available? Why should each agency be getting this? Perhaps this should be a function of the Intercountry Office in Service Programs.

19. Comment: 22 VAC 40-130-452 - It was noted that this section refers to both child-placing agencies and networking agencies. It is recommended there be a clear distinction between the two types of agencies. If there are unnecessary restrictions it could impact business in Virginia. Clarification is needed regarding whether it is a Federal issue to determine whether children are leaving the country illegally and whether the state should maintain an Intercountry office.

20. Comment: 22 VAC 40-130-452 - New Standard Proposed - In regard to post-placement supervision, could wording be added to insure that adoptive families will be in compliance with the post-placement requirements of the country from which the child is coming.

21. Comment: 22 VAC 40-130-452, C - Agency Responsibility in Intercountry Placements/ Adoptions - "The agency shall... Immigration and Naturalization Office." The name of this government agency is "Immigration and Naturalization Service." This should be corrected.

22. Comment: 22 VAC 40-130-452, D - Overall in this section, it is necessary that a differentiation be made between agencies that offer direct placement services and agencies that network with direct placement agencies. Separate standards need to be established for each. It would be a good idea to meet with agencies that offer intercountry adoption services before establishing the final draft of these standards. Many things are unrealistic and would require agencies to dictate policies to foreign countries. In China, for example, child assignments are made by the government, not by a foreign agent.

23. Comment: 22 VAC 40-130-452, D, 1 - Ensuring child's legal availability - Placement agencies do this to the best of their ability. Occasionally information from the foreign country is not accurate. It is difficult to guarantee information. Guidelines for accountability must be realistic. Networking agencies have no control over this information and it would be impossible for them to verify accuracy.

24. Comment: 22 VAC 40-130-452, D, 1 - "The agency shall ensure and receive documentation of a child's legal availability for adoption before the child is assigned to the adoptive applicant," This is a difficult, and in some instances, impossible, regulation to comply with. First, because most agencies do not have the expertise to make a determination of legal availability of the child in accordance with the laws of that child's country of birth. Second, in countries such as India, documents such as birth parents' relinquishments are considered confidential and are not routinely released to the adoptive parents or their agencies. Third, in private placement systems such as Chile's and Guatemala's, the child is, in fact, NOT legally available until after assignment, because the petition to terminate parental rights is presented to the court on behalf of the adoptive applicants after they have accepted the assignment and/or after the birth mother has accepted the applicants for her child. Finally, even when a child is legally available according to the laws of his or her country of origin, it does not guarantee that he or she is legally free according to US - INS regulations. This is further complicated because when there is any doubt about definitions, the final determination of eligibility to enter the country under a so-called "orphan visa" is made by the individual consular officer on duty at the time of the visa application.... Perhaps the standard could require "best efforts" or simply a clear explanation of these procedures, including the risks involved, to the adoptive parents, and provision of all documentation, as it becomes available.

25. Comment: 22 VAC 40-130-452, D, 2 - Foreign Agent Credentials - What are the guidelines for the Agent's credentials/qualifications? Again, it would be impossible for networking agencies to provide this information.

26. Comment: 22 VAC 40-130-452, D, 2 - "The agency shall verify the credentials and qualifications of agents in foreign countries working in their behalf on adoption matters." What are these credentials and qualifications and how do we verify them? We can get copies of law and social work degrees, but what are the credentials required when the main contact overseas is a foster mother, a translator/interpreter or a simple "gofer?" All of these have been and are people facilitating international adoptions. This standard is too vague.

Perhaps what can be required is that the agency evaluate the "agent" by interviewing that person, verifying experience and knowledge of the field, reputation with past clients and/or other agencies and the US Embassy in that country. Other areas to be evaluated could be the "agents" philosophy of adoption, services provided to children and adoptive parents, willingness to provide additional information to the Virginia - based agency (such as medical, social, legal, etc.) upon request, etc. and the agency could be required to document this evaluation.

27. Comment: 22 VAC 40-130-452, D, 3 - Child's developmental, medical and social history - Who provides the written statement regarding the information's accuracy, the placement agency or the foreign agent? Placement agencies cannot guarantee this information. Agencies do need to be accountable but it is unrealistic that this can always be the case. Few agencies will be willing to absorb the liability of guaranteeing the accuracy of information coming from foreign countries. Once again, networking agencies do not have access to this information.

28. Comment: 22 VAC 40-130-452, D, 3 - "The agency shall obtain all known medical, developmental and social history for the child, the birth family and extended family, including the child's placement history, and receive a written statement that the information is accurate and complete." Like the others, this standard can be difficult or impossible to comply with. In China, for example, the child referral form is issued by the central government, and while it has a little medical information and a photo, it has nothing else. The information is not complete, and frequently inaccurate (primarily because the forms are not dated, and one cannot therefore tell whether the information is current or several months old). We cannot require the Chinese government to give us a written statement about the accuracy and completeness of the information it provides us with. In India we face another problem: the law specifically prohibits the disclosure of any information about the birth family to the adoptive family. We sometimes are able to get some information anyway, but it is always outside of formal channels and frequently verbal only, due to the legal prohibition. Certainly no one would want to give us a written statement saying the information is complete and accurate. These are just two examples.

Again, we might use a standard of "best efforts" and disclosure of circumstances to adoptive parents. That is: adopting parents need to be informed of the risks and realities of incomplete or erroneous information from overseas.

29. Comment: 22 VAC 40-130-452, D, 4 - Documentation referred to above - This information may not be available to networking agencies. The adoptive family is contracting with the networking agency for home study and post-placement services only.

30. Comment: 22 VAC 40-130-452, D, 5 - "The agency shall notify the adoptive applicants within five working days whenever it receives information that a foreign country is suspending its adoption program." Two problems with this one: first, it should say, "the affected adoptive applicants," because it otherwise requires notification of all adoptive applicants. Second, it should say ("a foreign source or program"), rather than "a foreign country," because individual programs inside a given country close much more often than a whole country closes down. Also, I don't know of any country that has ever suspended its adoptions altogether. Most of the time they simply change their adoption legislation to make it difficult or impossible for foreigners (i.e., US citizens, in our case) to adopt in their country. For example: they require six or 12 months of residence in that country before being allowed to adopt. Or they require adoptive applicants to be citizens of their country.

In the case of a country like Chile, as another example, most agencies have closed their programs because the legal process has become so long, cumbersome, risky and expensive that it is not considered advisable to adopt there. The laws have not changed since 1990, and yet most Family Court judges refuse to hear international adoption cases (five out of the six courts in Santiago).

This is purely political, not legal. In El Salvador, the law was changed to facilitate adoption by foreigners, but most agencies closed their programs there because the bureaucracy, in fact, made it virtually impossible for an adoption by foreigners to be successfully completed.

Many times - in the last fifteen years of my experience this has happened in Child, India, Paraguay, El Salvador, Colombia, Peru and other countries - individual lawyers, social workers or other "agents" suspended their programs because of pending legislation which might affect adoptions - or because of attacks in the press, or the kind of passive resistance of government officials such as those in Chile or El Salvador. International adoption tends to be a very politically sensitive matter, and different individuals working in the field react differently to difficulties: many react by closing their doors, frequently when legislation governing the procedure has, in fact, not changed at all.

31. Comment: 22 VAC 40-130-452, D, 6, d - "The applicants' ability to cope with any issues that may occur related to their living circumstances." The last two words should be changed to read "early care."

32. Comment: 22 VAC 40-130-452, E, 1 - These standards also require that agencies be knowledgeable about procedures in the countries they work in, and how those procedures are generally interpreted by the INS and US Consulates or Embassies in those countries. A lot of harm is done to families attempting to adopt overseas by the simple fact that many agencies involved in international adoptions don't know the rules - and are generally not required to.

33. Comment: 22 VAC 40-130-452, F - Parent Initiated Foreign Adoptions - If a family chooses to pursue an adoption without the assistance of a placement agency, is the home study agency still responsible for verifying the validity of the child's background information?

34. Comment: 22 VAC 40-130-452, G - Agency Completing a Home Study - A clause regarding at whose expense such services would be provided would seem to be a helpful addition.

35. Comment: 22 VAC 40-130-452, H - “The agency shall document ... through Immigration and Naturalization Service, which....” Should be corrected to read: “... through the Immigration and Naturalization Service, which....”

Response to all Comments: This entire section has been revised in collaboration with several representatives of private adoption agencies that provide intercountry adoption services. The agencies were in agreement with the proposed revisions. A draft of the revision was provided to the agencies. No comments were received as a result of the revisions.

PART VII - ASSISTED CONCEPTION

Comment: 22 VAC 40-130-453, C - Home Study Requirements - “Agencies shall provide or assure that....” As before, “ensure” is a better word. (From licensing child-placing agency)

Response: Assure is replaced with ensure.

PART VIII - INDEPENDENT LIVING PLACEMENTS

Comment: 22 VAC 40-130-457, A, 2 - Intake and Agreement between Agency and Youth - If the youth is “in the custody of a private child-placing agency” that is (located) out of county (Fairfax) does the county in which the private child-placing agency is located bear the cost if any expenses should arise? What kind of custody does the private TFC provider assume? (From public department of social services)

Response: Youth in independent living placements are not usually in the “custody” of a licensed child-placing agency. Most are placed by local departments of social services that continue to have legal custody. This section is not applicable to youth in treatment foster care. Agencies providing independent living programs are not necessarily both a treatment foster care provider and an independent living provider. Regarding custody question: Statute allows licensed child-placing agencies to take legal custody of a child through a temporary entrustment agreement with the parents or guardian or through court action. This is generally only done by adoption agencies that accept placement of children directly from the parents.

Comment: 22 VAC 40-130-454 to 459 - Independent Living Placements - The independent living section is a welcome addition. The proposed regulations provide a framework upon which a wide range of programs can be developed and implemented. My only comment is that face to face contact [22 VAC 40-130-456, Section A.7] needs to be more than twice a month even as a minimum standard. Our program requires two face to face contacts a week with a telephone contact being allowed to accommodate work and school schedules. Even with this in place we had a “critical incident” that has required us to look at the entire supervision issue. We are now in the process of hiring a staff person that will provide onsite supervision and mentoring weekdays during the hours of 5 PM to 10 PM. It has been our experience that youth coming out of foster care and other out of home placements at least initially need more supervision. (From licensing child-placing agency)

Response: Agree. Standard has been revised to require additional contacts, until the agency determines the youth is eligible for less supervision.

Rationale: Many youth placed in independent living placements are not prepared for complete independence and need close supervision by agency staff.

PART IX - REPORTS

Comment: 22 VAC 40-130-470 - Death of a Child - When a child in agency custody or care dies the agency shall notify the parent or guardian of the child immediately and notify the Licensing Representative within 24 hours. Clarification is needed regarding procedures to follow to notify the Licensing Representative if this occurs on a weekend (i.e. Is voice mail appropriate, should the State hotline be contacted, etc. in order to stay within the 24 hour time frame). (From VALCPA)

Comment: 22 VAC 40-130-470 - Standard requires notification of licensing representative within 24 hours of a child's death. Suggest changing this to 48 hours since it is not possible to notify licensing on a weekend. (From licensing child-placing agency)

Response: Agree to change to "within 24 hours or by the end of the next business day."

Rationale: Clarification.

Comment: 22 VAC 40-130-480, A, 1 - Standard requires 24 hour notification of licensing when allegations of abuse and neglect are made against a staff member of the agency. Suggests that this be changed to 48 hours since it is not possible to notify licensing on a weekend. Also suggests adding when allegations of abuse and neglect are made against "a foster parent." (From licensing child-placing agency)

Response: Agree to change notification to "within 24 hours or by the end of the next business day." Do not agree to add the same notification time frame when allegations are made against a foster parent.

Rationale: Clarification is needed regarding time frames to notify, although messages may be left on voice mail or sent via electronic mail to licensing staff. Regarding notification for each abuse and neglect complaint about a foster parent, a later standard, A, 4 requires written notification of these complaints when they have been accepted by CPS. Licensing does not need to be notified immediately of every allegation made against foster parents.

Comment: 22 VAC 40-130-480, A, 1 - States "of a child" is very vague and undefined. Does this include a birth/adoptive child in the home? Do agencies submit a written report on these children, if so? (From licensing child-placing agency)

Comment: "Child" needs to be clarified. (From licensing child-placing agency)

Response: Standard revised to say that the agency must report suspected abuse or neglect of any child under the agency's supervision.

Rationale: Clarification needed.

Comment: 22 VAC 40-130-480 - Abuse and Neglect - Where the complaint has been accepted by CPS for investigation, the agency shall submit a written report of the results of the agency's investigation to the licensing representative within 60 days of receipt of the complaint. When the complaint has been accepted by CPS for investigation, the agency shall submit their investigation to the licensing representative within 30 days of receiving the findings from CPS. Sometimes agencies do not receive findings from CPS in time to meet the stated 60 day time frame within which to submit the report to the licensing representative. (From VALCPA)

Comment: 22 VAC 40-130-480, A, 4 - States that agency should wait to submit the written report until it receives the CPS report. This needs to be clarified in the standard, along with the expectation that the disposition needs to be included in the report. (From licensing child-placing agency)

Comment: Another requests that the written report not be submitted to licensing until after agency receives CPS report. Many times they do not receive these until after 60 days. (From licensing child-placing agency)

Response: Revised standard to require written report on the status of the investigation within 60 days and final report within 90 days. Added requirement that the CPS disposition be included in the agency's final report to licensing and must include the agency action taken.

Rationale: Ninety days is too long to wait for information about a CPS complaint in one of our licensed agencies' foster homes. This revision allows agencies to provide only a status report within 60 days. If the investigation is complete by this time, the final report can be submitted at this time.

PART X - CASE RECORD REQUIREMENTS

Comment: 22 VAC 40-130-540, C - Retention of Records - "When the agency does not have custody of the child, the agency shall retain the record for five years past the child's eighteenth birthday and then offer the record or information from the record to the custodial agency and provide upon request." This is an incomplete sentence: provide what upon request? And why would a non-custodial agency retain the record if another agency were the custodian? Or was this meant to refer to the custodial parent? (From licensing child-placing agency)

Response: Standard has been reworded to clarify.

Rationale: The non-custodial agency has information on the child while the child is in foster care with that agency. This is in addition to information kept by the custodial agency.

Comment: 22 VAC 40-130-550 - Disclosure of Information - Please add: "In sharing non-identifying information, the agency must share the complete record, including counseling information related to the adoption decision. The counseling record, not related to the placement decision may be excluded. (From licensing child-placing agency)

Response: Agree. Standard added to clarify the law's requirements regarding disclosure of information.

Rationale: Agencies have been confused about what information must be shared when a request for non-identifying information is received by the agency. Guidance material will clarify this further.

PART XI - TREATMENT FOSTER CARE

Comment: 22 VAC 40-130-610, A, 3 - Program Description - States requirement that treatment foster care programs provide for at least one full-time professional staff and two full-time equivalent professional staff is confusing. Do not understand what this means. (From licensing child-placing agency)

Comment: Standard is too confusing.

Response: Agree to change to read “shall provide for at least two full-time professional staff or one full-time professional staff and additional part-time staff whose total working hours add up to the equivalent of one full-time professional staff.”

Rationale: Clarification needed.

Comment: 22 VAC 40-130-610, A, 9 - The standard requires that the program description include the requirements for the organization and contents of the child’s case record to include all required documentation. The comment is that this is confusing and doesn’t understand why this should be in the program description. (From licensing child-placing agency)

Response: Do not agree to change.

Rationale: The intent of this requirement is to have the agency plan how its case records will be organized and state what documentation will be included. Having this in the program description allows those who review the agency’s description to know how these records are organized and what is to be included.

Comment: 22 VAC 40-130-620, C - Policies and Procedures - The agency shall have a written plan for back-up emergency care in the event that a child’s placement in a family fails or if the agency ceases to operate. Clarification is needed regarding what specifically is needed regarding a written plan for back-up emergency care. (From VALCPA)

Response: The phrase “or if the agency ceases to operate” has been removed from this standard. A separate standard has been added to require agencies to have a policy and procedure to address their plans for active cases and case records if they cease to operate as a child-placing agency. Also, the plan for back-up emergency care if a child needs to be removed from a family should be in place for each child placed in a foster home.

Rationale: The policy should address what the agency will do if this situation occurs.

Comment: 22 VAC 40-130-640, 2 - Intake, Pre-Admission Assessment - Current case plans from others and discharge plans, if applicable, should be received by the agency. It would be helpful to clarify what is meant by case plans and whether written plans need to be received. (From licensing child-placing agency)

Response: Standard has been clarified.

Rationale: Clarification needed.

Comment: 22 VAC 40-130-640, B - Intake - Pre-Admission Assessment should be changed to "Intake Assessment." Agencies have within 30 days of placement to write the assessment. This does not fall within the parameters of pre-admission. Intake Assessment is defined later in the document (22 VAC 40-130-80. Requirements for Case Records for Children, page 106). Terms should be consistent throughout the document. This section does not address the issue of emergency placements. At the end of this section include a statement to address this issue which allows agencies to make emergency placements and still be in compliance with standards. For example: EXCEPTION: When the above information is not available in emergency placements the information will be collected within 30 days of placement. The information required in this section is not always available and/or possible to get prior to admission in an emergency placement. (From VALCPA)

Response: Standards revised to clarify and to add exception for emergency admissions.

Rationale: Clarification.

Comment: 22 VAC 40-130-640, 7 - Intake - Pre-Admission Assessment - All documentation required by DMAS, if placements are funded by Medicaid. Delete this statement. These standards should be for DSS and should not reference DMAS or Medicaid since it is uncertain when Medicaid will be implemented. A separate module outlining DMAS requirements should be prepared when Medicaid is closer to implementation. (From VALCPA)

Response: Agree.

Rationale: DMAS will have its own regulation governing documentation to be maintained by enrolled providers.

Comment: 22 VAC 40-130-640, B, 8 and B, 8, a (Standards are now 22 VAC 40-130-640, C and C, 1 - See Virginia Register, February 16, 1999) - The standard requires that the agency's assessment (of material received during intake) must be written within 30 days. Comment states that a pre-admission assessment should be written before admission, not post placement. If the purpose is to achieve sound placement decisions and plan for relevant treatment services, then the information gathered should be documented prior to any placement decisions being made. (From licensing child-placing agency)

Response: Agree to change to require assessment of material before admission. Standard revised to require an application for admission with much of the material provided by the referring agency.

Rationale: The comment's rationale is correct. The intent of this assessment is to allow the agency to make sound placement decisions and plan for treatment services. A 30-day delay in writing this assessment does not encourage this intake planning to take place.

Comment: 22 VAC 40-130-640, B, 9 - Social history completed within 30 days - Comment states that one purpose of a good social history is to provide the child with birth and other information in the future. It is unrealistic to think that a thorough history can be completed within 30 days. States that a caseworker usually does not have a rapport with birth family in order to receive this information in the first 30 days of placement. Suggests that complete social history be completed within 60 to 90 days of placement and require a one page form to be in the file within 30 days with relevant, but general information on the child and his family. (From licensing child-placing agency)

Response: Standards have been revised so that the social history will be part of the application for admission to be completed by the referring agency and received prior to admission. If any information is incomplete, the licensed agency will be responsible for obtaining it.

Rationale: This vital information is necessary before admission to allow agencies to make sound placement decisions.

Comment: 22 VAC 40-130-640, C, 1 - Currently the local county DFS agency prepares the child for placement. Will the new regulations give that responsibility to the private child-placing agency? (From public department of social services)

Response: The new regulations will not give this responsibility totally to the licensed agency.

Rationale: Both public and private agencies must work together to prepare the child for placement. The private agency must address preparation regarding the services and activities the agency will provide, information about the foster home, and other information pertaining to the private agency.

Comment: 22 VAC 40-130-650, A, 4 - Acceptance of Child and Placement Agreements - The agency shall cooperate with the placing and custodial agency and allow access to the child at all times. Add "receiving" so the statement reads as follows: The receiving agency shall cooperate with the placing and custodial agency and allow access to the child at all times. (From VALCPA)

Response: Not necessary.

Rationale: The "agency" always refers to the licensed child-placing agency in these standards.

Comment: 22 VAC 40-130-650, B - "When accepting a child for placement from a parent or other individual holding custody, the agency shall obtain a temporary entrustment and follow the requirements of 63.1-204 of the Code of Virginia. See Chapter B, Foster Care Services, in the Services' Manual, Volume VII, Section III for guidance. Add the following: EXCEPTION: An agency licensed as a child-placing agency and certified as a proprietary school for the handicapped for the Department of Education shall not be required to take custody of a child placed in its special education program but shall enter into a placement agreement with the

parent or other individual holding custody.” This provides clarification for agencies that are licensed child-placing agencies and certified as proprietary schools for the handicapped by DOE. (From VALCPA)

Response: Agree. Exception added to this section.

Rationale: Statute permits this exception.

Comment: 22 VAC 40-130-660, A - Treatment and Service Plans and Progress Summaries in Treatment Foster Care - An agency shall prepare and implement a treatment and service plan for each child in its care. The parents shall be consulted unless parental rights have been terminated. Prior custodians or foster parents shall be consulted when appropriate. Add “when available” so the statement reads as follows: An agency shall prepare and implement a treatment and service plan for each child in its care. When available, the parents shall be consulted unless parental rights have been terminated. Prior custodians or foster parents shall be consulted when available and appropriate. Parents, prior custodians, and previous foster parents are not always available. (From VALCPA)

Response: Agree. Standard revised to include “when available” for the reasons stated in the comment. Also added standard that agency document why the parents could not be consulted. The custodial agency must always be consulted. This requirement has been added.

Comment: 22 VAC 40-130-660, A - Standard requires a treatment and service plan be written on each child in care. Comment states that the treatment plan and the service plan should be two completely separate items. The treatment plan is for specific day-to-day behaviors the child has and specific methods the treatment foster parents will use to combat the problems. The service plan focuses on the permanency planning for the child, services to be in place to help the child and family achieve permanency as well as the birth family’s status. (From licensed child-placing agency)

Response: Do not agree to have separate plans, but the standards are revised to clarify the requirements and intent of the service and treatment plan.

Rationale: Agencies may distinguish between treatment plans and permanency planning goals within the plan itself.

Comment: 22 VAC 40-130-660, A - Second sentence - Currently DFS consults with the private child-placing agency in the preparation and implementation of the treatment and service plan. The proposed standard provides for the parents to be involved. Does this preclude the local DFS? (From public department of social services)

Response: No. The standard has been revised to require child-placing agencies to consult with the agency that placed the child.

Rationale: The child’s custodial agency has the legal right to be involved in all service planning for a child in its custody.

Comment: 22 VAC 40-130-660, B - How will the agency hold custody? (From public department of social services)

Response: Licensed child-placing agencies are permitted by statute to accept legal custody of children through a temporary entrustment agreement or through court action. However, children placed in treatment foster care are almost always in the legal custody of a public department of social services or placed through a non-custodial agreement with the birth parents.

Comment: 22 VAC 40-130-660, C - Initial Treatment and Service Plan - For children in treatment foster care the agency shall prepare an individualized initial treatment and service plan within two weeks of placement that includes: Change two weeks to 30 days so the statement reads as follows: For children in treatment foster care the agency shall prepare an individualized initial treatment and service plan within thirty days of placement that includes: The current standard requires treatment plans to be completed within 30 days. There is no rationale to speed up the development of the plan. (From VALCPA)

Comment: 22 VAC 40-130-660, C and D - Standards require an initial two-week treatment and service plan and a comprehensive plan within 60 days. Comments are that:

It is unrealistic to formulate a treatment plan with two weeks of placement, since the treatment plan is based in part on the child's behaviors and the "honeymoon" phase of a child's placement needs to be considered. The focus is on stabilizing the placement. It would not be beneficial to write a two-week treatment plan.

The titles of the plans need to be clearer.

Suggestions are that the initial treatment plan be written within the first 30 days of placement and that it be more comprehensive. Require subsequent treatment plans be written every 90 days thereafter. To more clearly distinguish between treatment and service plans, delete the words "initial" and "comprehensive."

Since service plans are usually based on the ones received from the local departments of social services (custodial agencies), agencies need to have up to 90 days to write them. Suggests that standards require the service plans be written at the time of the quarterly reports, every 90 days after the placement date.

The last service plan of the year should include plans for the following year.

Call all service plans just "service plans" or, if combined with quarterly reports, call them "Quarterly Progress Reports and Service Plans." (From licensing child-placing agency)

Response: Agree to eliminate requirement of two-week service plan and require the comprehensive plan be done within 45 days. Requirements of plan are more clearly stated and tie in to the requirements for the 90 days progress report. Do not agree to allow 90 days to complete the initial service and treatment plan. Agencies should not wait for the custodial agency's court service plan before doing its own.

Rationale: Even though the two-week service plan was recommended by the original treatment foster care standards committee, several of the committee members are represented by the group of agencies that asked this to be reconsidered. We agree that two weeks is not enough time to evaluate the child's needs and complete a comprehensive service plan. However, the intent of the two-week plan was to plan services based on the initial intake information on the child. Ninety days is too long to wait before planning for the child. Agencies are responsible for planning for the child and to collaborate with the placing agency, the treatment foster parents, and others as necessary. This can be done by phone or by face-to-face meetings. We also recognize that the time frames established by Virginia law and the federal Safe Families and Adoption Act emphasize that permanency planning take place much sooner.

Comment: 22 VAC 40-130-660, C, 3 - Please include DFS as outlining the permanency planning goals for the child with the private TFC provider's preparation of an individualized initial treatment and service plan. (From public department of social services)

Response: This standard has been eliminated along with elimination of the two-week initial service plan. See next comment and response.

Comment: 22 VAC 40-130-660, D, 4 & 5 - Include "with consultation with DFS." Query: Are the proposed regulations written with the intent to give autonomy to the private child-placing agencies eliminating, minimizing the advice and consultation with local DSS's? (From public department of social services)

Response: No, the standard is revised to add "in consultation with the custodial agency."

Rationale: Licensed agencies must work in collaboration with the public agencies that place children with them. The proposed regulation is not intended to give private child-placing agencies autonomy in working with a child placed by a public department of social services. The standards are revised to clarify that service planning must be done with the custodial agency.

Comment: 22 VAC 40-130-670, B, 2 - Standard requires the quarterly progress report to include "any changes to the treatment and service plan and services to be provided during the next quarter." Comment asks which treatment and service plan this is referring to? (From licensing child-placing agency)

Response: All standards in this section have been clarified to identify each of the areas noted in the comprehensive treatment and service plan and ask for progress reports for each.

Rationale: Clarification needed.

Comment: 22 VAC 40-130-670, C - Progress Summaries - The fourth quarterly progress report shall address the above requirements and evaluate and update the comprehensive treatment and service plan for the upcoming year. Change and to "as well as" so the statement reads as follows: The fourth quarterly progress report shall address the above requirements as well as evaluate and update the comprehensive treatment and service plan for the upcoming year. (From VALCPA)

Response: Agree. Standard revised.

Rationale: Clarifies standard.

Comment: 22 VAC 40-130-670, F -Progress Summaries - The agency shall include and work with the child, the placing agency, and the parents, where appropriate, in the development of the quarterly progress summary and provide a copy to them. Add the word "receiving" so the statement reads as follows: The receiving agency shall include and work with the child, the placing agency, and the parents, where appropriate, in the development of the quarterly progress summary and provide a copy to them. Is this a violation of a confidentiality to share the entire treatment plan with all parties, i.e. should the child and the foster family be privy to a services being provided to the family? (From VALCPA)

Comment: 22 VAC 40-130-670, F- Progress Summaries - The agency shall include and work with the child, the placing agency, and the parents, where appropriate, in the development of the quarterly progress summary and provide a copy to them. This could be a violation of confidentiality for the foster family because there is identifying information in the report and other information that might not be appropriate to share with the biological family. (From licensing child-placing agency)

Response: Not necessary to add "receiving." The "agency" always refers to the licensed agency. Added "treatment foster parents" to list of those to be included in development of progress report. Copies of this report can be given to the birth parents and the foster parents, as long as confidential information is protected.

Comment: 22 VAC 40-130-680, F - Contacts with Child - Visits to children in Permanent Foster Care shall be in accordance with the child's treatment and service plan, but no less than every six months. Clarification is needed on standards for children in Permanent Foster Care who are also in Treatment Foster Care. The above requirement conflicts with the requirement that children in treatment foster care will have face-to-face contacts no less than twice a month, one of which shall be in the foster home. (22 VAC 40-130-680.B) (From licensing child-placing agency)

Response: The standard is not in conflict with the earlier one for children in treatment foster care.

Rationale: The requirement that children be seen in accordance with their treatment and service plan allows the treatment team to determine the most appropriate number of contacts based on the needs of the child and the permanent foster parents.

Comment: 22 VAC 40-130-680, H - "The child-placing agency shall work actively to support and enhance child-family relationships and work directly with families toward reunification as specified in the treatment and service plan." We are certainly in favor of this. However, our experience with the private therapeutics has been lip service but not practice. How will they be encouraged to follow this? (From public department of social services)

Response: Public agencies that place children in private licensed child-placing agencies are responsible for contracting and monitoring the type and level of services to be purchased from the licensed agency. Private agencies will also be monitored by licensing staff to determine compliance with this standard.

Comment: 22 VAC 40-130-690, D - Medical Examinations - The local DSS/DFS should be part of the decision making when professional clinical or consultative services are recommended or identified. (From public department of social services)

Response: Agree. Standard revised to include consultation with the custodial agency.

Rationale: The public departments of social services that place children in treatment foster care are the legal custodians and should be included in decisions to receive clinical services for the child.

Comment: 22 VAC 40-130-710, B - Narratives in the Child's Record - There shall be a monthly summary of the child's progress towards the goals and objectives identified in the treatment and service plan. Delete this requirement. Progress is currently summarized in quarterly reports. This was a DMAS requirement and should not be required prior to the implementation of Medicaid. (From VALCPA)

Response: Agree.

Rationale: DMAS will no longer require this monthly summary of the child's progress after January 1, 2001, so this standard has been eliminated.

Comment: 22 VAC 40-130-710, B - Requirements for narrative to include a monthly summary of the child's progress. Comment states that it needs to be more clearly defined as to where in the record and how the monthly summary should be documented. Suggests requiring that agencies attach an extra sheet to the treatment and service plan for monthly updates. (From licensing child-placing agency)

Response: Requirement deleted

Rationale: See above rationale.

Comment: 22 VAC 40-130-740, H - Aftercare Plans - "Written recommendations for aftercare shall be made for each child prior to the child's discharge. Such recommendations shall specify the nature, frequency, and duration of aftercare services to be provided to the child and the child's family." Delete the wording: "Aftercare Plans" and move the statement to section A in 22 VAC 40-130-740. Discharge from care. The section should read as follows: "A discharge summary shall be developed for each child and placed in the child's record within thirty (30) days of discharge. It shall include the date of and reason for discharge, the name of the person with whom the child was placed or to whom he was discharged, and a description of the services provided to the child and progress made while the child was in care. Written recommendations for aftercare shall be made for each child prior to the child's discharge. Such recommendations shall specify the nature, frequency, and duration of aftercare services to be provided to the child

and the child's family." Written discharge summaries, which include aftercare recommendations, are currently prepared. There is no need to do separate aftercare plans, which the agencies have minimal ability to implement once the child leaves the treatment foster care program. (From VALCPA)

Response: Agree.

Rationale: The intent of this standard is to ensure that discharge planning is done PRIOR to the child's discharge. However, this planning may be documented in the child's discharge plans.

Comment: 22 VAC 40-130-750 - Permanent Foster Care - Will the private agencies be encouraged to lower their rates for permanent foster care cases, inasmuch as there is less need for treatment and case management? (From public department of social services)

Response: This question is not related to the standards. The decision about fees is between the custodial placing agency and the licensed agency. Also, children in permanent foster care may need the same level of services as before.

Comment: 22 VAC 40-130-800, 14 - Requirements for Case Records for Children - "The record shall contain other material pertaining to a child in treatment foster care as required by these standards, Medicaid requirements, and any other applicable standards and law." Delete the phrase "Medicaid requirements," so the statement would read as follows: The record shall contain other material pertaining to a child in treatment foster care as required by these standards and any other applicable standards and by laws. There should be no references to Medicaid since the implementation date and other requirements are unknown at this time. (From VALCPA)

Response: Agree. The phrase has been removed from the standard.

Rationale: The Department of Medical Assistance Services has established its own regulation governing documentation.

Comment: 22 VAC 40-130-800, B, 5 - Authorizations for medical treatment, out of state travel and special activities in child's record. Delete according to comments and practice described on page 2 of these documents. See comments for 22 VAC 40-130-280, C, 3. (From public department of social services)

Response: Do not agree.

Rationale: This standard requires that copies of any authorizations from custodial agencies or parents be kept in the child's record. It is necessary to keep this information, regardless of what form it takes.

Comment: 22 VAC 40-130-800, C - Information on the child's birth family, previous foster families, and services provided to them shall be documented either in the child's record or a separate family record. Add "when available" at the beginning of the sentence so the statement reads as follows: When available, information on the child's birth family, previous foster

families, and services provided to them shall be documented either in the child's record or a separate family record. This information is not always available. (From VALCPA)

Response: Standard has been revised to say that if this information is not available, the reason shall be documented in the record.

Rationale: Every effort must be made by licensed agencies to receive this information on a child. If it is not available, the reasons why must be documented.

Comment: 22 VAC 40-130-810, C - Home Study of Treatment Foster Family Applicants - Please note that Fairfax County DFS uses the PRIDE training as recommended by the Child Welfare League of America, in its training of its regular foster parents. The PRIDE standards for training are more demanding than currently put forth in the suggested regulations. Fairfax will continue to use the PRIDE standards. Fairfax is encouraging its private therapeutic foster care providers to use the PRIDE training as well but notes that the providers may prefer to use the proposed regulations. (From public department of social services)

Response: The regulation cannot stipulate one type of training to be used by the licensed agencies.

Comment: 22 VAC 40-130-810, F - A report of a medical examination by a licensed physician, his designee, or an official of a local health department of all members of the household shall be obtained. The exam shall be conducted no earlier than six-months prior to the approval and shall contain: Change the time frame from six months to twelve months so the statement reads as follows: A report of a medical examination by a licensed physician, his designee, or an official of a local health department of all members of the household shall be obtained. The exam shall be conducted no earlier than twelve-months prior to the approval and shall contain: This should be consistent with the requirements for medical exams for adoptive homes (22 VAC 40-130-270, page 68, F). (From VALCPA)

Response: Agree. Standard has been revised to say twelve months prior to approval.

Rationale: Need to be consistent and reasonable.

Comment: 22 VAC 40-130-810, I- Criminal history record reports and sworn disclosure statements shall be received on each applicant pursuant to the Code of Virginia, 63.1-198.1 prior to approval. Agencies shall follow the standards in the Regulation for Criminal Record Checks (22 VAC 15-040-10 et.seq.) Add criminal history record reports and sworn disclosure statements will be received on all adults living in the home so the statement reads as follows: Criminal history record reports and sworn disclosure statements shall be received on each applicant and all adults living in the home prior to approval. Agencies shall not approve foster families if either foster parent applicant or other adult living in the home has been convicted of the specified offenses in the law. This should be consistent with the previous standards regarding Child Abuse and Neglect Registry being done on applicants as well as other adults living in the home. (From VALCPA)

Response: Standards revised to refer to the Code of Virginia and regulations promulgated by the State Board of Social Services related to background investigations.

Comment: 22 VAC 40-130-810, Q, 4 - All sleeping areas shall have operable smoke detectors and the home shall have at least one operable fire extinguisher. Clarification is needed regarding the definition of sleeping areas. Does this mean each bedroom must have a smoke detector or will a smoke detector in the hallway be acceptable? (From VALCPA)

Response: This standard has been removed.

Rationale: The department is unable to enforce fire safety regulations. We have recommended to the State Fire Marshal's office that foster homes be subject to the requirements of the Virginia Statewide Fire Prevention Code, which is enforced by the local fire officials.

Comment: 22 VAC 40-130-810, Q, 7 - Children over the age of two shall not share a bed or bedroom with the foster parents or other adults in the home, unless the child's documented medical needs or disabilities require the foster parent to sleep in the room with the child. Clarification is needed as to whether this prohibits an older foster child (teenager) from sharing a bedroom with a biological son/daughter of the foster family who is age 18 or older (legally an adult). (From VALCPA)

Response: Yes, it does prohibit this arrangement.

Comment: 22 VAC 40-130-810, Q, 11 - The home shall keep cleaning supplies and other toxic substances stored away from food, locked, and out of the reach of children. Delete the word "locked" and add an age parameter so the statement reads as follows: "The home shall keep cleaning supplies and other toxic substances stored away from food and out of reach of children under the age of six." The agency has already been required to determine that the applicant's home is free of hazards to the health and safety of children so it is not necessary to lock cleaning supplies or keep them out of reach, except for very young children. (From VALCPA)

Comment: 22 VAC 40-130-810. Q, 11- Home Study of Treatment Foster Family Applicants - Section Q-11 states "The home shall keep cleaning supplies and other toxic substances stored away from food, locked and out of the reach of small children." This could be interpreted to mean that a foster child, regardless of age, could not use cleaning products without adult supervision. This is contrary to teaching responsibility and independent living skills. I would suggest that the proposed regulation state that toxic cleaning supplies be stored in child proof containers and out of the reach of small children. (From a licensing child-placing agency)

Response: Agree. Standard revised to require that toxic cleaning supplies be secured and out of reach of children who are developmentally unable to understand the dangers. A standard is added to allow access to adolescents where appropriate.

Rationale: The intent of this standard was not to prevent teaching responsibility and independent living skills to adolescents. A more reasonable approach is needed to ensure the protection of young children, but not prevent older, more mature children from assisting with housework.

Comment: 22 VAC 40-130-810, U - The applicant shall be informed in writing within a week of the approval or disapproval and offered an interview to have the agency's decision explained to them. End the sentence after disapproval so the statement reads as follows: "The applicants shall be informed in writing within a week of the approval or disapproval." (From VALCPA)

Response: Agree. Standard has been revised as recommended.

Rationale: Child-placing agencies are given the authority by law and through regulation to make decisions regarding the approval or denial of a foster home. Many times a child must be removed from a foster home because one of the foster parents has received a founded child abuse or neglect report. In these cases, the law requires the child to be removed and the home cannot be approved for future placements. (Sections 63.1-198.1 and 63.1-211) This regulation should not require agencies to meet with them to explain a decision to close the home. Most agencies will do this voluntarily if the foster parents insist.

Comment: 22 VAC 40-130-820 - Reevaluation of Foster Home - Comment states that criminal history checks and child protective services checks be completed during every foster home reevaluation. (From VALCPA)

Comment: 22 VAC 40-130-820, E - Re-evaluation of Foster Homes - The agency shall receive a current report from the Division of Motor Vehicles on any new drivers in the home if they are to transport foster children. Add to this that Child Abuse and Neglect Registry, criminal history record reports, and sworn disclosure statements will be received on any new adults living in the home who did not live there at the time of the initial home study. (From VALCPA)

Response and rationale: Cannot require this since the current regulation regarding background investigations in child welfare agencies does not cover this. The CPA standards now refer to the Code of Virginia and the applicable regulations governing background investigations.

Comment: Forms: Initial and renewal applications.

Recommends clarifying some of the required attachments and including the requirements of the generic state application for licensure into the specific child-placing agency application. (From licensing staff person)

Response: Agree.

Rationale: Will streamline and reformat document.

Comment: Documents incorporated by reference.

The various sections of the Service Programs Manual that are incorporated by reference and made mandatory for agencies to follow may be revised several times during the year as state and federal law changes. This would require a revision to the Minimum Standards for Licensed Child-Placing Agencies each time. This would be extremely cumbersome and inefficient. Recommend referring agencies to the specific sections in the Code of Virginia and attaching

copies of these code sections to the regulation when it is sent to agencies. Therefore, when the law changes, the regulation will not need to be revised; just copies of the new laws sent to the agencies with explanations. (From licensing staff person)

Response: Agree. The standards have been revised to eliminate the documents as incorporated by reference. Agencies are instead instructed to use the documents as guidance material and to follow the requirements of the specific laws related to the policy.

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 crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

Following is the detail of all changes made to the 1989 regulation, including the proposed standards and changes made since the public comment period:

Part I. Definitions and Authority.

22 VAC 40-130-10. Definitions were added to cover adoptive placements, birth parents, emergency placements, short-term placements, a person, a placing agency, physical, mental and sexual abuse, and physical neglect. These definitions were necessary to clarify terms used in the regulation. As a result of public comment and the need for clarification, definitions of corporal punishment, assisted conception, foster home, permanent foster care placement, and treatment team were revised.

22 VAC 40-130-25. The scope and applicability of the regulation were added to this section to clarify to whom this regulation applies.

Part II. Organization and Administration

22 VAC 40-130-30. In order to assure that agencies have sponsors with knowledge and experience in child welfare, standards regarding sponsorship were revised to include requirements that the individual who applies to be licensed as a child-placing agency shall have knowledge of and experience in the program and services the agency offers. This requirement was also added to corporations and partnerships, stating that at least one of the members of the board of directors or the partnership have this knowledge and experience.

22 VAC 40-130-50, 22 VAC 40-130-60. Local departments of social services are given an exemption to the requirements to submit financial plans with the application for certification as a Medicaid treatment foster care provider. It was determined that it was not necessary to require financial documents from local departments since funding is mandated for children in foster care.

22 VAC 40-130-130. Caseload standards were revised to clarify and to allow an exception for treatment foster care agencies where the worker carries a caseload of both treatment foster care children and other children. Independent living placement agencies have smaller caseloads than previously allowed due to additional requirements in Part VIII.

22 VAC 40-130-155. Policies and procedures, which will apply to all agencies, are added to this section and removed from Part III - Personnel. They were inappropriately placed in the

personnel section. The policies and procedures must assure that children are not subjected to corporal punishment; physical, mental, verbal or sexual abuse; physical neglect; denied essential program or treatment services, meals, water, clothing, bedding, sleep or personal care products; and are not subjected to any humiliating, degrading or abusive actions. A new standard is added here to state that agencies shall comply with the Code of Virginia and applicable regulations regarding background investigations and approval of foster and adoptive homes. Standards are added to require policies and procedures governing acceptable methods of discipline and that these policies must be based on scientific literature in the field. The policies also must require that the placement agreements between the agencies and their foster and adoptive parents include a statement that an agreed upon plan of discipline has been developed. The agency must disclose to the applicant in writing prior to or during the home study the agency's criteria and values pertaining to discipline and parenting practices that may influence its assessments of the applicants. The agency must inform the foster or adoptive parent or parents in writing prior to or during the home study that the plan of discipline is a mutually agreeable statement that reflects the child's best interests in adjusting to a new family environment.

Part III. Personnel.

22 VAC 40-130-195. A proposed staff development standard was revised to allow an update on topics covered in new staff orientation, rather than a complete review of these topics. Agencies had pointed out in public comments that experienced social workers did not need a complete review. New requirement added that part of the ongoing staff development will include a review of the scientific literature in the field of discipline issues.

Part IV. Foster Care Services.

22 VAC 40-130-210. Changes were made to entrustment agreements to comport with changes in law. The intake section is revised to add medications to information received at intake, to require that intake information such as social histories be received prior to admission, to exempt emergency placements and short-term placements from certain requirements, to specify what must be included in the child's initial physical examination; and to add information to the agency's placement agreement received from the placing agency or parent. These revisions were considered needed by the foster care committee and by those who made public comments to the standards.

22 VAC 40-130-212 and 22 VAC 40-130-213. Standards re: service plans and progress reports are revised to specify that these reports must be individualized and include assessments of the child's emotional, social, behavioral, educational, developmental and medical needs and the goals set to meet those needs. Services and activities provided by the agency for the child must be described. The standards reference the requirements of law in the development of and review of service plans for agencies that have custody of the child; clarify and simplify the service plan requirements for agencies that do not have custody of the child; and include a different service plan for agencies providing short-term placements. The time frame requirements for service plans are changed from 30 days to 45 days and quarterly progress reports to be due 90 days after admission and every 90 days thereafter. This gives agencies additional time to develop a comprehensive initial service plan for a child and will require the first progress report 45 days later.

22 VAC 40-130-223. Requirements are added to require consultation with the child's placing agency in certain circumstances such as prior to moving a child from one foster home to another.

The purpose is to initiate more collaboration between the agencies and keep the custodial agency informed of the child's placements.

22 VAC 40-130-240. Instead of the discharge information being included as part of the narrative, agencies are required to develop a discharge summary with specific areas addressed. This is important to the child's guardian or custodial agency and to the child. It will provide a summary of progress the child made while in the care of the agency and describe the services provided by the agency to the child.

22 VAC 40-130-251. Respite care for foster parents is added as a requirement to allow the primary foster parents time away from the demands of foster parenting.

22 VAC 40-130-261. Both pre-service and ongoing training for foster parents is added. After public comment additional topics were added to the foster parent training requirements and a requirement that foster parents be consulted on their training needs.

22 VAC 40-130-270. Home studies for foster parents are revised to require a more complete study of the foster family prior to approval. After public comments were received, these standards were revised to require the agency to be sensitive to the foster parents' racial, ethnic and religious differences when evaluating the discipline the foster parents will use. Changes were made to require review of evacuation plans only with children who are developmentally able to understand. Requirements for smoke detectors and fire extinguishers were removed since the responsibility for fire regulations is with the Department of Housing and Community Development (State Fire Marshal).

22 VAC 40-130-271. Foster home agreement forms have been developed and made a part of the regulation. A statement that the agency and the foster parents have agreed to a plan of discipline is added to the agreement form.

22 VAC 40-130-272. The standards regarding the re-evaluation of foster parents are significantly revised from the 1989 regulation. This section requires updates any time the foster parents move or there is a change in marital status. The re-evaluation must include the reasons for removal of any children from the home as well as an evaluation of the foster parents' skills and their relationship with the children.

22 VAC 40-130-280. As a result of public comment, additional requirements were added to the foster home records to include any complaints and concerns the agency has with the foster parents and the date and reason for closure. The foster child's record requirements are expanded to specify the items to be included. After public comment, exceptions were added for short-term placements.

Part V – Adoption Services.

22 VAC 40-130-290. The program statement standards are revised to include the requirements of the Multi-Ethnic Placement Act, as amended, by requiring policy that states that race shall not be a factor in the placement of a child. The program statement also includes descriptions of intercountry adoption services and parental placement services, if provided.

22 VAC 40-130-301. The entrustment agreement requirements are revised to comport with changes in law. Standards are added to require agencies to develop a child-specific, mutually acceptable written agreement whenever two agencies are participating in a child's placement. This will clarify the roles and responsibilities of each agency and allow a way to address disagreements between the agencies.

22 VAC 40-130-310. Additional requirements are added to the requirements for temporary foster care prior to adoption for children under one year of age. These include completing the

intake assessment within thirty days of foster home placement and prior to completion of the adoptive home placement agreement. The standards also expand the content of the social history to have a more complete picture of the child, the child's family, the wishes of the birth mother, and prenatal care received by the child's birth mother. The agency is required to review the social history with the selected adoptive parents.

22 VAC 40-130-312. Service plans and progress reports are revised to specify what must be included in the service plan when the agency does not hold custody of the child. The agencies are referred to the law for the service plan requirements when the agency does hold custody. This section is also revised to include changes in the foster care laws related to service plan reviews, court hearings, and adoption progress reports.

22 VAC 40-130-320. The items to be considered when selecting an adoptive home are revised to remove the consideration of same race families in placement decisions and to require consideration of the best interests of the child. Reasons for selecting a specific home must be stated in the child's record. A standard is added to require agencies to provide adoptive parents with full factual information about the child and the child's birth family, except for identifying information. This must be provided in writing and signed by the adoptive parents with a copy kept in the file.

22 VAC 40-130-340. Additional items are added to prepare the older child for adoption. These items cover attachment issues, the need for the child to have contact with prior caretakers and birth relatives, and preparation of the adoptive family for the child. The current standards do not address the needs of older children awaiting adoptive placement.

22 VAC 40-130-350. The requirements of the Code of Virginia related to supervisory visits in the adoptive home after the child's placement are included. Specific topics are to be included in discussion and assessments of the adoptive home.

22 VAC 40-130-400. Requirements for orientation of adoptive applicants are added to assure that adoptive applicants are given as much information about the agency and the adoption process as possible and to help prepare them for the addition of a child to their home. New standards are added to the home study to require agencies to discuss the impact on the child if the adoptive parents' life expectancy is altered and to develop a plan of care if the adoptive parents should become incapacitated.

22 VAC 40-130-401. A new requirement is added to areas to assess in the adoptive home study related to the assessment of discipline the adoptive parents will use. The standard requires the agency to be sensitive to the adoptive applicants' racial, ethnic and religious differences. A new requirement for a written escape plan in case of emergencies is also added.

22 VAC 40-130-403. An adoptive placement agreement form is added as part of the regulation. This will include all of the requirements of the standards; therefore, not requiring the standards to repeat the requirements of a placement agreement. Agencies will be able to add additional items to the agreement if necessary.

22 VAC 40-130-420. Additional requirements have been added to information that must be kept in the birth parents' record. These include description of childhood and other background information, when known; the birth parents' relationship to each other; and information about the knowledge other family members have about the birth parent's decision to place the child for adoption.

Part VI. Interstate and Intercountry Adoption.

22 VAC 40-130-452. The current standards do not cover intercountry adoptions. This section adds several requirements to provide additional protection to the Virginia families who adopt children from another country and protections for the child. Several changes were made to the intercountry placement standards at the request of the private agencies that conduct intercountry adoptions. These still provide protection to the child and the adoptive family, but give flexibility to agencies that are unable to receive certain information on the child or the child's birth family. The changes also recognize the difference between agencies that work directly with foreign countries and those that only conduct home studies for adoptive parents who work with another agency facilitating the intercountry adoption process.

Part VIII. Independent Living Placements

This entire Part is new and establishes requirements for agencies that provide independent living placement services. Regulations governing the approval of these placements and supervision of youth are required by law.

22 VAC 40-130-456. Public comments received stated that agencies should have more contact with youth in independent living placements. Agencies will be required to have at least weekly telephone contact with the youth and at least twice monthly face-to-face contacts.

An exception is granted for youth living in college dormitories.

Part IX – Reports.

22 VAC 40-130-480. The requirement regarding notification of the licensing representative in cases of child abuse or neglect investigations in foster homes has been revised to require a status report in 60 days and a final report in 90 days.

Part X. Case Record Requirements.

22 VAC 40-130-550. The requirements regarding release of non-identifying information are expanded and more clearly reference the law.

Part XI. Treatment Foster Care.

This is a new Part added to the regulation to recognize the treatment or therapeutic foster care services necessary for children with serious emotional and behavioral problems.

22 VAC 40-130-640. New standards have been added requiring receipt of an application for admission to include the physical examination and social history prior to admission. A requirement for a written intake summary within two weeks of placement has been added.

22 VAC 40-130-650. New requirements added to the placement agreement between the agency and the parent or placing agency. These cover provisions for consent of routine and emergency medical care, out of state travel, and participation in fund raising activities.

22 VAC 40-130-660. Treatment and service plans have been revised to clarify and separate the treatment goals from the permanency planning goals and to be the same as the Medicaid treatment foster care case management standards. Standards were added to allow treatment foster parents to receive a copy of the treatment and service plan, as long as confidential information about the child's birth family is not revealed. A copy shall also be provided to the parents, if appropriate, and with the same restriction. Agencies will be required to document why any of these parties did not participate in developing the treatment and service plan.

22 VAC 40-130-670. Progress report standards have been revised to clarify and relate the standards more to the time period covered by the report. A new requirement states that the

agency shall provide a copy of the report to the placing agency, and to the treatment foster parents, if appropriate.

22 VAC 40-130-770. The treatment foster home agreement contains the same requirements as for foster parents. Agencies will be required to use the foster home placement agreement developed and made a part of the regulation, but will be able to add additional requirements as necessary.

22 VAC 40-130-790. Agencies will be required to consult the treatment foster parents on their training needs as part of the training plan for treatment foster parents.

22 VAC 40-130-810. Home studies for treatment foster parents were revised to require the agency to be sensitive to the foster parents' racial, ethnic and religious differences when evaluating the discipline the foster parents will use.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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.

This regulation has been carefully reviewed for its impact on families. Changes were made to the regulation to respect the institution of the family and to strengthen the rights of parents to discipline adopted and foster children. It emphasizes the agency's responsibility to include the birth parents in service planning and other decisions made for their child in foster care. It protects the family by requiring agencies to share social history and other information on the children they wish to adopt. This regulation has no impact on economic self-sufficiency, self-pride and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It strengthens the marital commitment through requiring services to foster and adoptive families who are having difficulty with the children placed in their home. The regulation may increase the disposable family income by requiring agencies to assess adoption assistance for adoptive families and to discuss and agree upon the fees that will be charged for adoptive home studies.