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Fast-Track Regulation Agency Background Document

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| Agency name | State Board of Social Services |
| Virginia Administrative Code (VAC) citation(s) | 22VAC40-730 |
| Regulation title(s) | Investigation of Child Abuse and Neglect in Out of Family Complaints |
| Action title | Amend Investigation of Child Abuse and Neglect in Out of Family Complaints |
| Date this document prepared | December 12, 2018 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulation governs the investigation of child abuse and neglect complaints in out of family (OOF) settings by local departments of social services (LDSS). The regulation is being amended to be consistent with 22VAC40-705 Child Protective Services, the Code of Virginia, and applicable federal law. This regulatory action is in follow-up to a periodic review of the regulation. The agency proposes simple amendments to the existing regulation for the purpose of clarity and reformatting of information to conform to the requirements of "Form, Style, and Procedure Manual for Publication of Virginia Regulations."

Additionally, definitions in the regulation have been updated to reflect the definitions provided in § 63.2-100 of the Code of Virginia. Definitions have been added for "child-placing agency" and "foster home" in order to provide clarity on OOF settings. The training requirements for staff qualified to conduct OOF investigations have been updated. The regulation has been updated to include language from § 63.2-

1511 A1 of the Code of Virginia regarding OOF investigations involving school employees. The regulation has also been updated to include language from § 63.2-1503 M of the Code of Virginia regarding the rights of an abuser or neglecter who has been criminally charged. Lastly, the agency proposes repealing section 120 of the regulation, as the monitoring of cases is addressed in 22VAC40-705.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

LDSS—local department of social services
OOF—out of family

Statement of Final Agency Action

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

The State Board of Social Services approved this Fast-Track regulatory action for 22VAC40-730 on December 12, 2018.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

As required by Virginia Code § 2.2-4012.1, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

Four years have passed since a periodic review of this regulation was completed; therefore, a periodic review was warranted. Section 63.2-217 of the Code of Virginia gives the State Board of Social Services the responsibility to make rules and regulations to administer social services in the Commonwealth under Chapter 15 (63.2-1500 et seq.) of Title 63.2 of the Code of Virginia.

The fast-track process is appropriate for the promulgation of this regulatory action because the changes being made are simple and intended to update and clarify language in the regulation. It is unlikely any one would oppose these changes.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’s overall regulatory authority.

Section 63.2-217 of the Code of Virginia gives the State Board of Social Services the responsibility to make rules and regulations to administer social services in the Commonwealth under Chapter 15 (63.2-1500 et seq.) of Title 63.2 of the Code of Virginia. Sections 63.2-1506, 63.2-1511 and 63.2-1516.1 provide additional legal mandates for Child Protective Services Investigations in out of family settings.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The regulatory action is essential to protect the health, safety, and welfare of citizens because it addresses provisions governing the investigation of child abuse and neglect in out of family settings. The regulation is being amended to be consistent with 22VAC40-705 Child Protective Services, the Code of Virginia, and applicable federal law. The amendments update the regulations to provide clarification and conform with the requirements of "Form, Style, and Procedure Manual for Publication of Virginia Regulations."

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The proposed regulatory action will amend existing provisions and add new provisions to comport with 22VAC40-705, Code of Virginia, and applicable federal law.

Substantive changes include:

- Updating the definition of "child day program" to mirror the language in § 63.2-100 of the Code of Virginia;
- Adding a definition of "child-placing agency" and "foster home";
- Updating the definition of "facility" to clarify that child day programs include both licensed and religiously-exempt programs;
- Updating language in the definition of "residential facility";
- Updating training requirements for staff qualified to conduct OOF investigations;
- Adding specific language from §3.2-1511 A1 of the Code of Virginia regarding investigations involving school employees;
- Repealing 22VAC40-730-120. Monitoring of cases for compliance;
- Adding new section on the protocol for OOF investigations consistent with 22VAC40-705; and
- Adding specific language from § 63.2-1503 M of the Code of Virginia regarding the rights of an alleged abuser or neglecter who has been criminally charged for the same conduct.

Issues

Please identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

This regulatory action clarifies and updates existing language, which is an advantage to the public and to the LDSS who are required to use this regulation when they conduct investigations of child abuse or neglect in OOF settings. There are no disadvantages to the public or the Commonwealth.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no other state agencies particularly affected by the proposed regulatory action.

Localities Particularly Affected

There are no localities particularly affected by the proposed regulatory action.

Other Entities Particularly Affected

There are no other entities particularly affected by the proposed regulatory action.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

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| <i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; | The amendments to this regulation do not have cost to the state. |
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| b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources | |
| <i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures. | There is no cost to other state agencies for this action. |
| <i>For all agencies:</i> Benefits the regulatory change is designed to produce. | There are no fiscal benefits for this regulatory action. |

Impact on Localities

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| Projected costs, savings, fees or revenues resulting from the regulatory change. | There is no cost to the localities for this action. |
| Benefits the regulatory change is designed to produce. | There are no fiscal benefits to localities for this action. |

Impact on Other Entities

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| Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect. | This regulation affects LDSS. |
| Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. | There are 120 LDSS. No small businesses are affected. |
| All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. | There are no projected costs for this regulatory action. |
| Benefits the regulatory change is designed to produce. | The regulatory action is not designed to produce fiscal benefits. |

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential

purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There are no other ways to accomplish the updates to this regulation other than through the regulatory process.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

The regulation itself provides authority for LDSS to provide direct social services. The amendments being made by this regulatory action clarify and update existing language in the regulation. The regulation does not impact small business and does not have reporting requirements.

Public Participation

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Detail of Changes

Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.

If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Delete inapplicable tables.

If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.

For changes to existing regulation(s), please use the following chart:

| Current section number | New section number, if applicable | Current requirement | Change, intent, rationale, and likely impact of new requirements |
|------------------------|-----------------------------------|--|--|
| 10 | | <p>Part I Definitions</p> <p>References § 63.2-100 of the Code of Virginia in the definition of “child day program.”</p> <p>Types of child day programs are not specified in existing regulation.</p> <p>Current regulation lists possible types of facilities in the “residential facility” definition.</p> | <p>Removed.</p> <p>Removed reference to § 63.2-100 of the Code of Virginia and updated the language in the definition to mirror the language used for the definition in the Code of Virginia.</p> <p>Added definition of “child-placing agency” to the regulation.</p> <p>Added “licensed or religiously exempted” to clarify types of child day programs in the definition of “facility.”</p> <p>Added definition of “foster home” to the regulation.</p> <p>Removed listing of possible facility types, as the language was duplicative, and to comply with the requirements of the “Form, Style, and Procedure Manual for Publication of Virginia Regulations.”</p> |
| 20 | | <p>Part II Policy Article 1 Out of Family Investigation Policy</p> <p>Indicates types of OOF setting covered under this regulation.</p> <p>Indicates staff will be qualified to conduct investigations in OOF settings based on criteria identified by the department.</p> <p>References regulation within the regulation.</p> | <p>Removed.</p> <p>Removed listing of types of facilities, as types of facilities are defined in section 10 of this regulation.</p> <p>Changed to indicate “Staff shall be determined to be qualified based on completion of an out of family training course as approved by the Department.”</p> <p>Removed duplicative reference to regulation.</p> |

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| 40 | | Uses duplicative and outdated language in regulation. | Removed duplicative language and updated language in regulation. |
| 60 | | Prints with “cps” in lower case. | Updated “CPS” to upper case because it is an acronym for Child Protective Services. |
| 70 | | Uses duplicative and outdated language in the regulation. | Removed duplicative language and updated language in regulation. |
| 115 | | <p>B.1. References § 63.2-1511 of the Code of Virginia when determining the validity of complaints involving school employees.</p> <p>B.2. and B.3.</p> <p>B.4. Indicates failure of DSS staff to advise alleged abuser or neglecter of the complaint does not cause a voluntary statement to be inadmissible in a criminal proceeding.</p> <p>B.5.</p> <p>B.6., B.7., B.8.</p> | <p>Removed reference to § 63.2-1511 of the Code of Virginia in B.1. and updated to include the language in § 63.2-1511 A 1 regarding the use of reasonable and necessary force by school employees to maintain order and safety.</p> <p>Removed from this section of the regulation. Added to section 140 of the regulation.</p> <p>Removed from this section of the regulation.</p> <p>Renumbered to B.2.</p> <p>Removed from the section of regulation. Added to section 140 of the regulation.</p> |
| 120 | | Monitoring of cases for compliance. | Repealed from regulation because monitoring of cases for compliance is addressed in 22VAC40-705. |
| 130 | | <p>Article 2 Local Staff Qualifications in Out of Family Investigations</p> <p>A.1. “Documented competency in designated general knowledge and skills and specified out of family knowledge and skills; and”</p> <p>A.2. Indicates the completion of out of family policy training</p> | <p>Removed from regulation.</p> <p>Removed from regulation.</p> <p>Removed A.2 formatting. Changed to require the “completion of an out of family training course as approved by the Department.”</p> |
| | 140 | | <p>Created new section to clarify the protocol for all OOF investigations pursuant to 22VAC40-705.</p> <p>Mirrored language from B.2., B.3., B.6., and B.7., which were removed from section 115, to distinguish the protocol</p> |

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| | | | for all OOF investigations. Added language from § 63.2-1503 M of the Code of Virginia regarding the rights of an alleged abuser or neglecter who has been criminally charged for the same conduct. |
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