



Virginia
Regulatory
Town Hall

Emergency Regulation Agency Background Document

Agency Name:	Virginia Department of Social Services
VAC Chapter Number:	22 VAC 40-705-10 et seq.
Regulation Title:	Child Protective Services
Action Title:	Implement Differential Response
Date:	October 16, 2001

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

Emergency Preamble

Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).

Please include a brief summary of the emergency action. There is no need to state each provision or amendment.

Chapter 500, 2000 Acts of Assembly made changes to Title 63.1 of the Code of Virginia in § 63.1-248.1 et seq. and required that regulations be promulgated to take effect within 280 days of enactment. This regulation is not otherwise exempt under the provisions of § 9-6.14:4.1 C (4).

These emergency regulations are intended to provide guidance to local departments of social services as they implement statewide a child protective services differential response system that has been piloted in five localities.

Basis

Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.

Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.

The statutory authority for promulgating this regulation is found in Title 63.1 Welfare (Social Services) of the Code of Virginia. Chapter 12.1, § 63.1-248 et seq. of the Virginia Code places responsibility for providing protective services for children with the Department of Social Services. Chapter 1, § 63.1-25 places authority with the Board of Social Services to make rules and regulations consistent with the Virginia Code § 63.1-248.1 et seq. These regulations are necessitated by legislation enacted by the 2000 General Assembly session.

The Office of the Attorney General has reviewed these regulations and has certified that the agency has the statutory authority to promulgate emergency regulations and that they comport with applicable state and federal laws.

Substance

Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

- Overall: Changes to language are made wherever needed to incorporate family assessment as a response to a valid CPS report.

- Section 10: Provides definitions for “differential response” and “family assessment.” (The definition of family assessment can easily be compared to investigation to see what is similar and different about these processes.)

- Section 50B: Requires an additional decision at intake: which response to make to each report - an investigation or family assessment.
- Section 50E: Encourages memoranda of understanding between local social services agencies and law enforcement agencies.
- Section 50H: Clarifies when an investigation is the required response.
- 50H2: Delineates the purpose of a family assessment.
- 60 - 3b: Requires reassignment of a family assessment to investigation if the agency takes emergency custody of the child.
- 70B: Emphasizes collaboration with the family in family assessments.
- 80A: Outlines required contacts to be made by the local agency when completing family assessments.
- 90A: Outlines the conditions in which a CPS worker in both family assessments and investigations may enter a home if permitted by a person who resides in the home.
- 90B: Requires the CPS worker to explain orally and in writing the responsibilities and authorities of CPS in order to make the parent or caretaker aware of the benefits and consequences of completing the family assessment.
- 110: Clarifies the types of assessments required in both family assessments and investigations.
- 120B & C, 140B5 & D3: These sections address required notifications for family assessments.
- 150B: Addresses the right of families to refuse services offered as the result of a completed family assessment.
- 150C: Notes that court intervention to mandate services may be requested to engage families in needed services to prevent abuse/neglect.
- 180C: Requires local child protective services staff to receive training in order for the agency to become “designated” as a differential response agency.

This regulatory action is intended to promote the safety and well being of children within their families in Virginia. Until the enactment of this legislation all valid reports of child abuse or neglect had to be investigated and a finding made as to abuse or neglect by an alleged abuser. The new legislation and these regulations allow for a response to valid reports of less serious abuse or neglect that is less adversarial and

more likely to engage families in services, if needed, to protect their own children. These regulation changes are only those required by legislation.

The permanent final regulations are being developed and may need to provide more details regarding safety assessments and determining the most appropriate response to a valid report. A Notice of Intended Regulatory Action (NOIRA) to replace the emergency regulations and provide other needed changes is in development. Policy decisions will be made very soon that impact the permanent regulations; then the NOIRA will be submitted.

Alternatives

Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.

Reform to the child protective services program is occurring across the nation. Virginia has looked at what other states are doing and has piloted reforms in five Virginia localities for the past five years. The current plan for implementing a differential response for child protective services appears to be the least intrusive and least burdensome method to meet the dual purpose of protecting children and supporting families whenever possible.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The implementation of these emergency regulations will allow for a less adversarial response to many families in allegations of child abuse or neglect. It was determined through evaluation of the pilots that families receiving family assessments, rather than investigations, felt more comfortable describing their needs related to keeping their children safe and more receptive to services to enable them to better care for their children. Thus, the emergency regulation strengthens the authority and rights of parents to nurture and supervise their children. It encourages or supports self-sufficiency, self-pride, and assumption of responsibility for one's children. It is not expected to significantly impact marital commitment or family income.