



COMMONWEALTH of VIRGINIA
DEPARTMENT OF SOCIAL SERVICES
Office of the Commissioner

S. Duke Storen
Commissioner

July 27, 2026

MEMORANDUM

TO: Members, State Board of Social Services

FROM: Duke Storen *S. Duke Storen*

REGULATION: 22VAC40-211, Foster and Adoptive Family Home Approval Standards
Amend Chapter 211 for 2026 Legislative Changes

ACTION: Exempt Regulation

This action will align the regulation with statutory changes made by the 2026 session of the Virginia General Assembly, regarding barrier crime waivers. I request that you approve the exempt regulation for publication in the *Virginia Register*.

If you have questions concerning this requested regulatory action, please contact our Regulatory Coordinator, Karin Clark, at (804) 726-7017 or karin.clark@dss.virginia.gov.

DS:kc
Attachments


townhall.virginia.gov

Exempt Action: Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC40-211
VAC Chapter title(s)	Foster and Adoptive Home Approval Standards for Local Departments of Social Services
Action title	Amend Chapter 211 for 2026 Legislative Changes
Final agency action date	August 17, 2026
Date this document prepared	August 17, 2026

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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

This regulatory action will amend 22VAC40-211, Foster and Adoptive Home Approval Standards for Local Departments of Social Services, to ensure it complies with 2026 legislative changes. Chapters 647 (HB 632) and 648 (SB 305) of the 2026 Acts of Assembly allow for a barrier crime waiver to be requested for prospective kinship foster parents and adult household members in the home. The amendments in this regulatory action are necessary to reflect these changes and to ensure that local departments perform a safety assessment, home inspection, and a permanency assessment before submitting a request for a waiver to the department.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "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."

This regulatory action is necessary to implement the requirements of legislation passed during the 2026 Session of the Virginia General Assembly. The legislation requires the State Board of Social Services to promulgate regulations.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) that the agency has "adopted final amendments" to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, "On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)]."

The State Board of Social Services approved the exempt action for 22VAC40-211, Foster and Adoptive Home Approval Standards for Local Departments of Social Services, on TBD.



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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MEMORANDUM

TO: Karin Clark
Virginia Department of Social Services

FROM: Susan P. D. Whyte 
Assistant Attorney General

DATE: July 31, 2026

SUBJECT: Exempt Final Stage Review of 22VAC40-211-90
Amend Chapter 211 for 2026 Legislative Changes

You have asked the Office of the Attorney General to review the attached regulation and determine if the State Board of Social Services ("State Board") has the statutory authority to promulgate the exempt regulatory amendments and if the amendments comport with applicable state law.

Pursuant to Virginia Code § 63.2-217, the State Board is required to promulgate regulations as may be necessary or desirable to carry out the purposes of Title 63.2 of the Virginia Code. I have reviewed the attached regulation, and it is my opinion the State Board has the authority to promulgate this regulation subject to compliance with the provisions of Executive Order 17, and that in so doing the State Board does not exceed that authority.

This regulation is exempt from the procedures of Article 2 of the Virginia Administrative Process Act. Specifically, the changes proposed are exempt pursuant to the enactment language of Chapter 648 of the Acts of Assembly.

If you have any questions, please feel free to call me at 804.786.3450.

Project 8718 - Final

Department of Social Services

Amend Chapter 211 for 2026 Legislative Changes

22VAC40-211-90. Allowing a waiver.

A. The local department may request and the provider may receive a permanent or temporary waiver from the department on a standard if the waiver does not jeopardize the safety and proper care of the child or violate federal or state laws or local ordinances.

B. To allow children to be placed with kinship foster parents, temporary waivers may be granted for preservice training, completion of a mutual family assessment, tuberculosis assessment, screening, or tests and physical examinations for a period not to exceed six months. Permanent waivers related to standards for the home of a provider as referenced in 22VAC40-211-70 may be granted to kinship foster parents.

C. If a provider is granted a waiver and is in compliance with all other requirements of this chapter, the provider is considered fully approved.

D. Any temporary waivers granted are for a period not to exceed six months. Before the end of the six-month period, the kinship foster parent must have completed all requirements that had previously been waived under subsection B of this section.

E. Any permanent waivers granted are considered on a case-by-case basis and must be reviewed on an annual basis by the department.

F. A local department may request a barrier crime waiver for prospective kinship foster parents and adult household members in accordance with § 63.2-901.2 of the Code of Virginia.

1. No child shall be placed in a home where a prospective kinship foster parent or an adult household member has a conviction for a barrier crime as defined in § 19.2-392.02 of the Code

of Virginia and the individual does not meet the exceptions in subsection E, F, G, H and I of § 63.2-901.1, unless the barrier crime waiver has been approved by the department.

2. The local department must complete the following before submitting an application to request a barrier crime waiver:

a. A safety assessment that includes the factors in subsection (c) of § 63.2-901.2 of the Code of Virginia;

b. An in-person inspection of the home; and

c. A permanency assessment on the department-issued template.