

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 561

An Act to amend and reenact §§ 63.2-900.1 and 63.2-915 of the Code of Virginia, relating to kinship foster care; notice and appeal.

[H 716]

Approved April 11, 2022

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-900.1 and 63.2-915 of the Code of Virginia are amended and reenacted as follows:

§ 63.2-900.1. Kinship foster care.

A. The local board shall, in accordance with regulations adopted by the Board, determine whether the child has any relative who may be eligible to become a kinship foster parent. Searches for relatives eligible to serve as kinship foster parents shall be conducted at the time the child enters foster care, at least annually thereafter, and prior to any subsequent changes to the child's placement setting. The local board shall take all reasonable steps to provide notice to such relatives of their potential eligibility to become kinship foster parents and explain any opportunities such relatives may have to participate in the placement and care of the child, including opportunities available through kinship foster care or kinship guardianship.

If a relative requests to become the child's kinship foster parent, the local board shall provide the relative with any forms or materials that must be submitted in order to become a kinship foster parent within no more than 15 days of such request. If the relative's request to become a kinship foster parent is denied, the local board shall provide to the relative (i) a clear and specific explanation of the reasons for such denial, (ii) a statement that such denial is appealable pursuant to § 63.2-915, and (iii) information regarding the procedure for filing such appeal.

B. Kinship foster care placements pursuant to this section shall be subject to all requirements of, and shall be eligible for all services related to, foster care placement contained in this chapter. Subject to approval by the Commissioner, a local board may grant a waiver of the Board's standards for foster home approval, set forth in regulations, that are not related to safety. Training requirements may be waived for purposes of initial approval; however, such training requirements shall be completed within six months of the initial approval. If a local board determines that training requirements are a barrier to placement with a kinship foster parent and that placement with such kinship foster parent is in the child's best interest, the local board shall submit a waiver request to the Commissioner. Waivers granted pursuant to this subsection shall be considered and, if appropriate, granted on a case-by-case basis and shall include consideration of the unique needs of each child to be placed. Upon request by a local board, the Commissioner shall review the local board's decision and reasoning to grant a waiver and shall verify that the foster home approval standard being waived is not related to safety. If the Commissioner grants the waiver and allows approval of the home in accordance with Board regulations, the child may be placed in the home immediately. The approval or disapproval by the Commissioner of the local board's waiver shall not be considered a case decision as defined in § 2.2-4001.

C. The kinship foster parent shall be eligible to receive payment at the full foster care rate for the care of the child.

D. During the process of determining whether a person should be approved as a kinship foster parent, a local board shall not require that the child be removed from the physical custody of the kinship foster parent who is the subject of such approval process, provided the placement remains in the child's best interest.

E. A child placed in kinship foster care pursuant to this section shall not be removed from the physical custody of the kinship foster parent, provided that the child has been living with the kinship foster parent for six consecutive months and the placement continues to meet approval standards for foster care, unless (i) the kinship foster parent consents to the removal; (ii) removal is agreed upon at a family partnership meeting as defined by the Department; (iii) removal is ordered by a court of competent jurisdiction; or (iv) removal is warranted pursuant to § 63.2-1517.

F. For purposes of this section, "relative" means an adult who is (i) related to the child by blood, marriage, or adoption or (ii) fictive kin of the child.

§ 63.2-915. Appeals to Commissioner.

~~A. Pursuant~~ *The following individuals shall have the right to file an appeal with the Commissioner: (i) pursuant to § 63.2-900.1, any individual whose request to become a kinship foster parent or (ii) pursuant to 42 U.S.C. § 671 (a)(12) 671(a)(12), any individual whose claim for benefits available pursuant to 42 U.S.C. § 670 et seq. or whose claim for benefits pursuant to § 63.2-905 is denied or is not acted upon by the local department with reasonable promptness shall have the right to appeal to the Commissioner.*

B. The Commissioner shall provide an opportunity for a hearing, reasonable notice of which shall be given in writing to the applicant or recipient and to the proper local board in such manner and form as the Commissioner may prescribe. The Commissioner may make or cause to be made an investigation of the facts. The Commissioner shall give fair and impartial consideration to testimony of witnesses, or other evidence produced at the hearing, reports by the local board and local director or of investigations made or caused to be made by the Commissioner, or any facts that the Commissioner may deem proper to enable him to decide fairly the appeal or review. The decision of the Commissioner shall be binding and considered a final agency action for purposes of judicial review of such action pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

C. The Commissioner may delegate the duty and authority to consider and make determinations on any appeal filed in accordance with this section to duly qualified officers.

D. The Board shall promulgate regulations to implement the provisions of this section. *Such regulations shall require that upon receiving a request for an appeal regarding kinship foster care, (i) a hearing be conducted as soon as practicable and (ii) a decision be rendered within no more than 90 days.*

2. That the Board of Social Services (the Board) shall promulgate regulations to implement the provisions of this act. The Board's initial adoption of regulations necessary to implement the provisions of this act shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), except that the Board shall provide an opportunity for public comment on such regulations prior to adoption.