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SENATE BILL NO. 1328

Offered January 13, 2021

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A BILL to amend and reenact §§ 16.1-282.1, 63.2-100, as it is currently effective and as it shall become effective, 63.2-905, 63.2-906, and 63.2-1305 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 13 of Title 63.2 a section numbered 63.2-1306, relating to State-Funded Kinship Guardianship Assistance program.

Patron—Mason

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-282.1, 63.2-100, as it is currently effective and as it shall become effective, 63.2-905, 63.2-906, and 63.2-1305 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 13 of Title 63.2 a section numbered 63.2-1306 as follows:

§ 16.1-282.1. Permanency planning hearing for children in foster care.

A. In the case of a child who was the subject of a foster care plan filed with the court pursuant to § 16.1-281, a permanency planning hearing shall be held within 10 months of the dispositional hearing at which the foster care plan pursuant to § 16.1-281 was reviewed if the child (a) was placed through an agreement between the parents or guardians and the local board of social services where legal custody remains with the parents or guardians and such agreement has not been dissolved by court order; or (b) is under the legal custody of a local board of social services or a child welfare agency and has not had a petition to terminate parental rights filed on the child's behalf, has not been placed in permanent foster care, or is age 16 or over and the plan for the child is not independent living. The board or child welfare agency shall file a petition for a permanency planning hearing 30 days prior to the date of the permanency planning hearing scheduled by the court. The purpose of this hearing is to establish a permanent goal for the child and either to achieve the permanent goal or to defer such action through the approval of an interim plan for the child.

To achieve the permanent goal, the petition for a permanency planning hearing shall seek to (i) transfer the custody of the child to his prior family, or dissolve the board's placement agreement and return the child to his prior family; (ii) transfer custody of the child to a relative other than the child's prior family or to fictive kin for the purpose of establishing eligibility for the *Federal-Funded Kinship Guardianship Assistance* program pursuant to § 63.2-1305, subject to the provisions of subsection A1; (iii) terminate residual parental rights pursuant to § 16.1-277.01 or 16.1-283; (iv) place a child who is 16 years of age or older in permanent foster care pursuant to § 63.2-908; (v) if the child has been admitted to the United States as a refugee or asylee and has attained the age of 16 years or older and the plan is independent living, direct the board or agency to provide the child with services to transition from foster care; or (vi) place a child who is 16 years of age or older in another planned permanent living arrangement in accordance with the provisions of subsection A2. If the child has been in the custody of a local board or child welfare agency for 15 of the most recent 22 months and no petition for termination of parental rights has been filed with the court, the local board or child welfare agency shall state in its petition for a permanency planning hearing (a) the reasons, pursuant to subdivision A 1, 2, or 3 of § 63.2-910.2, why a petition for termination of parental rights has not been filed and (b) the reasonable efforts made regarding reunification or transfer of custody to a relative and the timeline of such efforts. In cases in which a foster care plan approved prior to July 1, 2011, includes independent living as the goal for a child who is not admitted to the United States as an asylee or refugee, the petition shall direct the board or agency to provide the child with services to transition from foster care.

For approval of an interim plan, the petition for a permanency planning hearing shall seek to continue custody with the board or agency, or continue placement with the board through a parental agreement; or transfer custody to the board or child welfare agency from the parents or guardian of a child who has been in foster care through an agreement where the parents or guardian retains custody.

Upon receipt of the petition, if a permanency planning hearing has not already been scheduled, the court shall schedule such a hearing to be held within 30 days. The permanency planning hearing shall be held within 10 months of the dispositional hearing at which the foster care plan was reviewed pursuant to § 16.1-281. The provisions of subsection B of § 16.1-282 shall apply to this petition. The procedures of subsection C of § 16.1-282 and the provisions of subsection G of § 16.1-282 shall apply to the scheduling and notice of proceedings under this section.

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59 A1. The following requirements shall apply to the transfer of custody of the child to a relative other
60 than the child's prior family or to fictive kin for the purpose of establishing eligibility for the
61 *Federal-Funded* Kinship Guardianship Assistance program pursuant to § 63.2-1305 in accordance with
62 the provisions of clause (ii) of subsection A. Any order transferring custody of the child to a relative
63 other than the child's prior family shall be entered only upon a finding, based upon a preponderance of
64 the evidence, that the relative is one who, after an investigation as directed by the court, (i) is found by
65 the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive,
66 continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the
67 child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order
68 shall so state. The court's order transferring custody to a relative should further provide, as appropriate,
69 for any terms or conditions which would promote the child's interest and welfare.

70 A2. The following requirements shall apply to the selection and approval of placement in another
71 planned permanent living arrangement as the permanent goal for the child in accordance with clause (vi)
72 of subsection A:

73 1. The board or child welfare agency shall petition for alternative (vi) of subsection A only if the
74 child has a severe and chronic emotional, physical or neurological disabling condition for which the
75 child requires long-term residential treatment; and the board or child welfare agency has thoroughly
76 investigated the feasibility of the alternatives listed in clauses (i) through (v) of subsection A and
77 determined that none of those alternatives is in the best interests of the child. In a foster care plan filed
78 with the petition pursuant to this section, the board or agency shall document the following: (i) the
79 investigation conducted of the placement alternatives listed in clauses (i) through (v) of subsection A
80 and why each of these is not currently in the best interest of the child; (ii) at least one compelling
81 reason why none of the alternatives listed in clauses (i) through (v) is achievable for the child at the
82 time placement in another planned permanent living arrangement is selected as the permanent goal for
83 the child; (iii) the identity of the long-term residential treatment service provider; (iv) the nature of the
84 child's disability; (v) the anticipated length of time required for the child's treatment; and (vi) the status
85 of the child's eligibility for admission and long-term treatment. The court shall ensure that the local
86 department has documentation of the intensive, ongoing, and, as of the date of the hearing, unsuccessful
87 efforts made to return the child home or secure a placement for the child with a fit and willing relative,
88 including adult siblings, or an adoptive parent, including through efforts that utilize search technology,
89 including social media, to find the child's biological family members. The court shall ask the child about
90 the child's desired permanency outcome and make a judicial determination, accompanied by an
91 explanation of the reasons that the alternatives listed in clauses (i) through (iii) of subsection A continue
92 to not be in the best interest of the child.

93 2. Before approving alternative (vi) of subsection A as the plan for the child, the court shall find (i)
94 that the child has a severe and chronic emotional, physical or neurological disabling condition; (ii) that
95 the child requires long-term residential treatment for the disabling condition; and (iii) that none of the
96 alternatives listed in clauses (i) through (v) of subsection A is achievable for the child at the time
97 placement in another planned permanent living arrangement is approved as the permanent goal for the
98 child. If the board or agency petitions for alternative (vi), alternative (vi) may be approved by the court
99 for a period of six months at a time.

100 3. At the conclusion of the permanency planning hearing, if alternative (vi) of subsection A is the
101 permanent plan, the court shall schedule a hearing to be held within six months to review the child's
102 placement in another planned permanent living arrangement in accordance with subdivision A2 4. All
103 parties present at the hearing at which clause (vi) of subsection A is approved as the permanent plan for
104 the child shall be given notice of the date scheduled for the foster care review hearing. Parties not
105 present shall be summoned to appear as provided in § 16.1-263. Otherwise, this subsection A2 shall
106 govern the scheduling and notice for such hearings.

107 4. The court shall review a foster care plan for any child who is placed in another planned
108 permanent living arrangement every six months from the date of the permanency planning hearing held
109 pursuant to this subsection, so long as the child remains in the legal custody of the board or child
110 welfare agency. The board or child welfare agency shall file such petitions for review pursuant to the
111 provisions of § 16.1-282 and shall, in addition, include in the petition the information required by
112 subdivision A2 1. The petition for foster care review shall be filed no later than 30 days prior to the
113 hearing scheduled in accordance with subdivision A2 3. At the conclusion of the foster care review
114 hearing, if alternative (vi) of subsection A remains the permanent plan, the court shall enter an order
115 that states whether reasonable efforts have been made to place the child in a timely manner in
116 accordance with the permanency plan and to monitor the child's status in another planned permanent
117 living arrangement.

118 However, if at any time during the six-month approval periods permitted by this subsection, a
119 determination is made by treatment providers that the child's need for long-term residential treatment for
120 the child's disabling condition is eliminated, the board or agency shall immediately begin to plan for

post-discharge services and shall, within 30 days of making such a determination, file a petition for a permanency planning hearing pursuant to subsection A. Upon receipt of the petition, the court shall schedule a permanency planning hearing to be held within 30 days. The provisions of subsection B of § 16.1-282 shall apply to this petition. The procedures of subsection C of § 16.1-282 and the provisions of subsection G of § 16.1-282 shall apply to proceedings under this section.

A3. The following requirements shall apply to the selection and approval of permanent foster care pursuant to clause (iv) of subsection A:

1. The court shall ensure that the local department has documentation of the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made to return the child home or secure a placement for the child with a fit and willing relative, including adult siblings, or an adoptive parent, including through efforts that utilize search technology, including social media, to find the child's biological family members.

2. The court shall ask the child about the child's desired permanency outcome and make a judicial determination, accompanied by an explanation of the reasons that the alternatives listed in clauses (i) through (iii) of subsection A continue to not be in the best interest of the child.

B. The following requirements shall apply to the selection and approval of an interim plan for the child in accordance with subsection A:

1. The board or child welfare agency shall petition for approval of an interim plan only if the board or child welfare agency has thoroughly investigated the feasibility of the alternatives listed in clauses (i) through (v) of subsection A and determined that none of those alternatives is in the best interest of the child. If the board or agency petitions for approval of an interim plan, such plan may be approved by the court for a maximum period of six months. The board or agency shall also file a foster care plan that (i) identifies a permanent goal for the child that corresponds with one of the alternatives specified in clauses (i) through (v) of subsection A; (ii) includes provisions for accomplishing the permanent goal within six months; and (iii) summarizes the investigation conducted of the alternatives listed in clauses (i) through (v) of subsection A and why achieving each of these is not in the best interest of the child at this time. The foster care plan shall describe the child's placement, including the in-state and out-of-state placement options and whether the child's placement is in state or out of state. If the child's placement is out of state, the foster care plan shall provide the reason why the out-of-state placement is appropriate and in the best interests of the child.

2. Before approving an interim plan for the child, the court shall find:

a. When returning home remains the plan for the child, that the parent has made marked progress toward reunification with the child, the parent has maintained a close and positive relationship with the child, and the child is likely to return home within the near future, although it is premature to set an exact date for return at the time of this hearing; or

b. When returning home is not the plan for the child, that marked progress is being made to achieve the permanent goal identified by the board or child welfare agency and that it is premature to set an exact date for accomplishing the goal at the time of this hearing. The court shall consider the in-state and out-of-state placement options, and if the child has been placed out of state, determine whether the out-of-state placement is appropriate and in the best interests of the child.

3. Upon approval of an interim plan, the court shall schedule a hearing to be held within six months to determine that the permanent goal is accomplished and to enter an order consistent with alternative (i), (ii), (iii), (iv), or (v) of subsection A. All parties present at the initial permanency planning hearing shall be given notice of the date scheduled for the second permanency planning hearing. Parties not present shall be summoned to appear as provided in § 16.1-263. Otherwise, subsection A shall govern the scheduling and notice for such hearings.

C. In each permanency planning hearing and in any hearing regarding the transition of the child from foster care to independent living, the court shall consult with the child in an age-appropriate manner regarding the proposed permanency plan or transition plan for the child, unless the court finds that such consultation is not in the best interests of the child.

D. In cases in which a child is placed by the local board of social services or a licensed child-placing agency in a qualified residential treatment program as defined in § 16.1-228, the provisions of subsection E of § 16.1-281 shall apply to any hearing held pursuant to this section.

E. At the conclusion of the permanency planning hearing held pursuant to this section, whether action is taken or deferred to achieve the permanent goal for the child, the court shall enter an order that states whether reasonable efforts have been made to reunite the child with the child's prior family, if returning home is the permanent goal for the child; or whether reasonable efforts have been made to achieve the permanent goal identified by the board or agency, if the goal is other than returning the child home.

In making this determination, the court shall give consideration to whether the board or agency has placed the child in a timely manner in accordance with the foster care plan and completed the steps

182 necessary to finalize the permanent placement of the child.

183 **§ 63.2-100. (Effective until July 1, 2021) Definitions.**

184 As used in this title, unless the context requires a different meaning:

185 "Abused or neglected child" means any child less than 18 years of age:

186 1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or
187 inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than
188 accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental
189 functions, including, but not limited to, a child who is with his parent or other person responsible for his
190 care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled
191 substance, or (ii) during the unlawful sale of such substance by that child's parents or other person
192 responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would
193 constitute a felony violation of § 18.2-248;

194 2. Whose parents or other person responsible for his care neglects or refuses to provide care
195 necessary for his health. However, no child who in good faith is under treatment solely by spiritual
196 means through prayer in accordance with the tenets and practices of a recognized church or religious
197 denomination shall for that reason alone be considered to be an abused or neglected child. Further, a
198 decision by parents who have legal authority for the child or, in the absence of parents with legal
199 authority for the child, any person with legal authority for the child, who refuses a particular medical
200 treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary
201 care if (i) such decision is made jointly by the parents or other person with legal authority and the child;
202 (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the
203 subject of his medical treatment; (iii) the parents or other person with legal authority and the child have
204 considered alternative treatment options; and (iv) the parents or other person with legal authority and the
205 child believe in good faith that such decision is in the child's best interest. Nothing in this subdivision
206 shall be construed to limit the provisions of § 16.1-278.4;

207 3. Whose parents or other person responsible for his care abandons such child;

208 4. Whose parents or other person responsible for his care commits or allows to be committed any act
209 of sexual exploitation or any sexual act upon a child in violation of the law;

210 5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or
211 physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco
212 parentis;

213 6. Whose parents or other person responsible for his care creates a substantial risk of physical or
214 mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as
215 defined in § 55.1-2000, with a person to whom the child is not related by blood or marriage and who
216 the parent or other person responsible for his care knows has been convicted of an offense against a
217 minor for which registration is required as a Tier III offender pursuant to § 9.1-902; or

218 7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in
219 the Trafficking Victims Protection Act of 2000, 22 U.S.C § 7102 et seq., and in the Justice for Victims
220 of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.

221 If a civil proceeding under this title is based solely on the parent having left the child at a hospital
222 or emergency medical services agency, it shall be an affirmative defense that such parent safely
223 delivered the child to a hospital that provides 24-hour emergency services or to an attended emergency
224 medical services agency that employs emergency medical services providers, within 14 days of the
225 child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for
226 adoption, the court may find such a child is a neglected child upon the ground of abandonment.

227 "Adoptive home" means any family home selected and approved by a parent, local board or a
228 licensed child-placing agency for the placement of a child with the intent of adoption.

229 "Adoptive placement" means arranging for the care of a child who is in the custody of a
230 child-placing agency in an approved home for the purpose of adoption.

231 "Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable
232 confinement of an adult as defined in § 63.2-1603.

233 "Adult day care center" means any facility that is either operated for profit or that desires licensure
234 and that provides supplementary care and protection during only a part of the day to four or more aged,
235 infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by
236 the State Board of Health or the Department of Behavioral Health and Developmental Services, and (ii)
237 the home or residence of an individual who cares for only persons related to him by blood or marriage.
238 Included in this definition are any two or more places, establishments or institutions owned, operated or
239 controlled by a single entity and providing such supplementary care and protection to a combined total
240 of four or more aged, infirm or disabled adults.

241 "Adult exploitation" means the illegal, unauthorized, improper, or fraudulent use of an adult as
242 defined in § 63.2-1603 or his funds, property, benefits, resources, or other assets for another's profit,
243 benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the

adult of his rightful use of or access to such funds, property, benefits, resources, or other assets. "Adult exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional failure to use the financial resources of an adult in a manner that results in neglect of such adult; (ii) the acquisition, possession, or control of an adult's financial resources or property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services or perform services against his will for another's profit, benefit, or advantage if the adult did not agree, or was tricked, misled, or defrauded into agreeing, to pay for such goods or services or to perform such services.

"Adult foster care" means room and board, supervision, and special services to an adult who has a physical or mental condition. Adult foster care may be provided by a single provider for up to three adults. "Adult foster care" does not include services or support provided to individuals through the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9.

"Adult neglect" means that an adult as defined in § 63.2-1603 is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is a written or oral expression of consent by that adult.

"Adult protective services" means services provided by the local department that are necessary to protect an adult as defined in § 63.2-1603 from abuse, neglect or exploitation.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least a moderate level of assistance with activities of daily living.

"Assisted living facility" means any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.), but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

"Auxiliary grants" means cash payments made to certain aged, blind or disabled individuals who receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive these benefits except for excess income.

"Birth family" or "birth sibling" means the child's biological family or biological sibling.

"Birth parent" means the child's biological parent and, for purposes of adoptive placement, means parent(s) by previous adoption.

"Board" means the State Board of Social Services.

"Child" means any natural person who is (i) under 18 years of age or (ii) for purposes of the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9, under 21 years of age and meets the eligibility criteria set forth in § 63.2-919.

"Child day center" means a child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

"Child-placing agency" means (i) any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to § 63.2-1819, (ii) a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221, or (iii) an entity that assists

305 parents with the process of delegating parental and legal custodial powers of their children pursuant to
306 Chapter 10 (§ 20-166 et seq.) of Title 20. "Child-placing agency" does not include the persons to whom
307 such parental or legal custodial powers are delegated pursuant to Chapter 10 (§ 20-166 et seq.) of Title
308 20. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their
309 authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

310 "Child-protective services" means the identification, receipt and immediate response to complaints
311 and reports of alleged child abuse or neglect for children under 18 years of age. It also includes
312 assessment, and arranging for and providing necessary protective and rehabilitative services for a child
313 and his family when the child has been found to have been abused or neglected or is at risk of being
314 abused or neglected.

315 "Child support services" means any civil, criminal or administrative action taken by the Division of
316 Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or
317 collect child support, or child and spousal support.

318 "Child-welfare agency" means a child day center, child-placing agency, children's residential facility,
319 family day home, family day system, or independent foster home.

320 "Children's residential facility" means any facility, child-caring institution, or group home that is
321 maintained for the purpose of receiving children separated from their parents or guardians for full-time
322 care, maintenance, protection and guidance, or for the purpose of providing independent living services
323 to persons between 18 and 21 years of age who are in the process of transitioning out of foster care.
324 Children's residential facility shall not include:

325 1. A licensed or accredited educational institution whose pupils, in the ordinary course of events,
326 return annually to the homes of their parents or guardians for not less than two months of summer
327 vacation;

328 2. An establishment required to be licensed as a summer camp by § 35.1-18; and

329 3. A licensed or accredited hospital legally maintained as such.

330 "Commissioner" means the Commissioner of the Department, his designee or authorized
331 representative.

332 "Department" means the State Department of Social Services.

333 "Department of Health and Human Services" means the Department of Health and Human Services
334 of the United States government or any department or agency thereof that may hereafter be designated
335 as the agency to administer the Social Security Act, as amended.

336 "Disposable income" means that part of the income due and payable of any individual remaining
337 after the deduction of any amount required by law to be withheld.

338 "Energy assistance" means benefits to assist low-income households with their home heating and
339 cooling needs, including, but not limited to, purchase of materials or substances used for home heating,
340 repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or
341 repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance
342 with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the
343 Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

344 "Family and permanency team" means the group of individuals assembled by the local department to
345 assist with determining planning and placement options for a child, which shall include, as appropriate,
346 all biological relatives and fictive kin of the child, as well as any professionals who have served as a
347 resource to the child or his family, such as teachers, medical or mental health providers, and clergy
348 members. In the case of a child who is 14 years of age or older, the family and permanency team shall
349 also include any members of the child's case planning team that were selected by the child in
350 accordance with subsection A of § 16.1-281.

351 "Family day home" means a child day program offered in the residence of the provider or the home
352 of any of the children in care for one through 12 children under the age of 13, exclusive of the
353 provider's own children and any children who reside in the home, when at least one child receives care
354 for compensation. The provider of a licensed or registered family day home shall disclose to the parents
355 or guardians of children in their care the percentage of time per week that persons other than the
356 provider will care for the children. Family day homes serving five through 12 children, exclusive of the
357 provider's own children and any children who reside in the home, shall be licensed. However, no family
358 day home shall care for more than four children under the age of two, including the provider's own
359 children and any children who reside in the home, unless the family day home is licensed or voluntarily
360 registered. However, a family day home where the children in care are all related to the provider by
361 blood or marriage shall not be required to be licensed.

362 "Family day system" means any person who approves family day homes as members of its system;
363 who refers children to available family day homes in that system; and who, through contractual
364 arrangement, may provide central administrative functions including, but not limited to, training of
365 operators of member homes; technical assistance and consultation to operators of member homes;
366 inspection, supervision, monitoring, and evaluation of member homes; and referral of children to

available health and social services.

"Federal-Funded Kinship Guardianship Assistance program" means a program consistent with 42 U.S.C. § 673 that provides, subject to a kinship guardianship assistance agreement developed in accordance with § 63.2-1305, payments to eligible individuals who have received custody of a child of whom they had been the foster parents.

"Fictive kin" means persons who are not related to a child by blood or adoption but have an established relationship with the child or his family.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board where legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency. "Foster care placement" does not include placement of a child in accordance with a power of attorney pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20.

"Foster home" means a residence approved by a child-placing agency or local board in which any child, other than a child by birth or adoption of such person or a child who is the subject of a power of attorney to delegate parental or legal custodial powers by his parents or legal custodian to the natural person who has been designated the child's legal guardian pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20 and who exercises legal authority over the child on a continuous basis for at least 24 hours without compensation, resides as a member of the household.

"General relief" means money payments and other forms of relief made to those persons mentioned in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with § 63.2-401.

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person; (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8; and (iii) a home in which are received only children who are the subject of a properly executed power of attorney pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20.

"Independent living" means a planned program of services designed to assist a child age 16 and over and persons who are former foster care children or were formerly committed to the Department of Juvenile Justice and are between the ages of 18 and 21 in transitioning to self-sufficiency.

"Independent living arrangement" means placement of (i) a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency by the local board or licensed child-placing agency or (ii) a child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department of Juvenile Justice immediately prior to placement by the Department of Juvenile Justice, in a living arrangement in which such child or person does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. "Independent living services" may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years; (ii) is between the ages of 18 and 21 and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local board of social services; or (iii) is a child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department of Juvenile Justice immediately prior to placement in an independent living arrangement. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the residence.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

428 "Kinship care" means the full-time care, nurturing, and protection of children by relatives.

429 "Kinship guardian" means the adult relative of a child in a kinship guardianship established in
430 accordance with § 63.2-1305 *or* 63.2-1306 who has been awarded custody of the child by the court after
431 acting as the child's foster parent.

432 "Kinship guardianship" means a relationship established in accordance with § 63.2-1305 *or* 63.2-1306
433 between a child and an adult relative of the child who has formerly acted as the child's foster parent that
434 is intended to be permanent and self-sustaining as evidenced by the transfer by the court to the adult
435 relative of the child of the authority necessary to ensure the protection, education, care and control, and
436 custody of the child and the authority for decision making for the child.

437 "Kinship Guardianship Assistance program" means a program consistent with 42 U.S.C. § 673 that
438 provides, subject to a kinship guardianship assistance agreement developed in accordance with
439 § 63.2-1305, payments to eligible individuals who have received custody of a relative child of whom
440 they had been the foster parents.

441 "Local board" means the local board of social services representing one or more counties or cities.

442 "Local department" means the local department of social services of any county or city in this
443 Commonwealth.

444 "Local director" means the director or his designated representative of the local department of the
445 city or county.

446 "Merit system plan" means those regulations adopted by the Board in the development and operation
447 of a system of personnel administration meeting requirements of the federal Office of Personnel
448 Management.

449 "Parental placement" means locating or effecting the placement of a child or the placing of a child in
450 a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

451 "Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to the
452 aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child
453 care; and general relief.

454 "Qualified assessor" means an entity contracting with the Department of Medical Assistance Services
455 to perform nursing facility pre-admission screening or to complete the uniform assessment instrument for
456 a home and community-based waiver program, including an independent physician contracting with the
457 Department of Medical Assistance Services to complete the uniform assessment instrument for residents
458 of assisted living facilities, or any hospital that has contracted with the Department of Medical
459 Assistance Services to perform nursing facility pre-admission screenings.

460 "Qualified individual" means a trained professional or licensed clinician who is not an employee of
461 the local board of social services or licensed child-placing agency that placed the child in a qualified
462 residential treatment program and is not affiliated with any placement setting in which children are
463 placed by such local board of social services or licensed child-placing agency.

464 "Qualified residential treatment program" means a program that (i) provides 24-hour residential
465 placement services for children in foster care; (ii) has adopted a trauma-informed treatment model that
466 meets the clinical and other needs of children with serious emotional or behavioral disorders, including
467 any clinical or other needs identified through assessments conducted pursuant to clause (viii) of this
468 definition; (iii) employs registered or licensed nursing and other clinical staff who provide care, on site
469 and within the scope of their practice, and are available 24 hours a day, 7 days a week; (iv) conducts
470 outreach with the child's family members, including efforts to maintain connections between the child
471 and his siblings and other family; documents and maintains records of such outreach efforts; and
472 maintains contact information for any known biological family and fictive kin of the child; (v) whenever
473 appropriate and in the best interest of the child, facilitates participation by family members in the child's
474 treatment program before and after discharge and documents the manner in which such participation is
475 facilitated; (vi) provides discharge planning and family-based aftercare support for at least six months
476 after discharge; (vii) is licensed in accordance with 42 U.S.C. § 671(a)(10) and accredited by an
477 organization approved by the federal Secretary of Health and Human Services; and (viii) requires that
478 any child placed in the program receive an assessment within 30 days of such placement by a qualified
479 individual that (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based,
480 validated, and functional assessment tool approved by the Commissioner of Social Services; (b)
481 identifies whether the needs of the child can be met through placement with a family member or in a
482 foster home or, if not, in a placement setting authorized by 42 U.S.C. § 672(k)(2), including a qualified
483 residential treatment program, that would provide the most effective and appropriate level of care for the
484 child in the least restrictive environment and be consistent with the short-term and long-term goals
485 established for the child in his foster care or permanency plan; (c) establishes a list of short-term and
486 long-term mental and behavioral health goals for the child; and (d) is documented in a written report to
487 be filed with the court prior to any hearing on the child's placement pursuant to § 16.1-281, 16.1-282,
488 16.1-282.1, or 16.1-282.2.

489 "Registered family day home" means any family day home that has met the standards for voluntary

registration for such homes pursuant to regulations adopted by the Board and that has obtained a certificate of registration from the Commissioner.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. The definition of "residential living care" includes the services provided by independent living facilities that voluntarily become licensed.

"Sibling" means each of two or more children having one or more parents in common.

"Social services" means foster care, adoption, adoption assistance, child-protective services, domestic violence services, or any other services program implemented in accordance with regulations adopted by the Board. Social services also includes adult services pursuant to Article 4 (§ 51.5-144 et seq.) of Chapter 14 of Title 51.5 and adult protective services pursuant to Article 5 (§ 51.5-148) of Chapter 14 of Title 51.5 provided by local departments of social services in accordance with regulations and under the supervision of the Commissioner for Aging and Rehabilitative Services.

"Special order" means an order imposing an administrative sanction issued to any party licensed pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A special order shall be considered a case decision as defined in § 2.2-4001.

"State-Funded Kinship Guardianship Assistance program" means a program that provides payments to eligible individuals who have received custody of a relative child subject to a kinship guardianship assistance agreement developed in accordance with § 63.2-1306.

"Supervised independent living setting" means the residence of a person 18 years of age or older who is participating in the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9 where supervision includes a monthly visit with a service worker or, when appropriate, contracted supervision. "Supervised independent living setting" does not include residential facilities or group homes.

"Temporary Assistance for Needy Families" or "TANF" means the program administered by the Department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the Temporary Assistance for Needy Families program for families in which both natural or adoptive parents of a child reside in the home and neither parent is exempt from Virginia Initiative for Education and Work (VIEW) participation under § 63.2-609.

"Title IV-E Foster Care" means a federal program authorized under §§ 472 and 473 of the Social Security Act, as amended, and administered by the Department through which foster care is provided on behalf of qualifying children.

§ 63.2-100. (Effective July 1, 2021) Definitions.

As used in this title, unless the context requires a different meaning:

"Abused or neglected child" means any child less than 18 years of age:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child. Further, a decision by parents who have legal authority for the child or, in the absence of parents with legal authority for the child, any person with legal authority for the child, who refuses a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person with legal authority and the child; (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person with legal authority and the child have considered alternative treatment options; and (iv) the parents or other person with legal authority and the child believe in good faith that such decision is in the child's best interest. Nothing in this subdivision shall be construed to limit the provisions of § 16.1-278.4;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law;

551 5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or
552 physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco
553 parentis;

554 6. Whose parents or other person responsible for his care creates a substantial risk of physical or
555 mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as
556 defined in § 55.1-2000, with a person to whom the child is not related by blood or marriage and who
557 the parent or other person responsible for his care knows has been convicted of an offense against a
558 minor for which registration is required as a Tier III offender pursuant to § 9.1-902; or

559 7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in
560 the Trafficking Victims Protection Act of 2000, 22 U.S.C § 7102 et seq., and in the Justice for Victims
561 of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.

562 If a civil proceeding under this title is based solely on the parent having left the child at a hospital
563 or emergency medical services agency, it shall be an affirmative defense that such parent safely
564 delivered the child to a hospital that provides 24-hour emergency services or to an attended emergency
565 medical services agency that employs emergency medical services providers, within 14 days of the
566 child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for
567 adoption, the court may find such a child is a neglected child upon the ground of abandonment.

568 "Adoptive home" means any family home selected and approved by a parent, local board or a
569 licensed child-placing agency for the placement of a child with the intent of adoption.

570 "Adoptive placement" means arranging for the care of a child who is in the custody of a
571 child-placing agency in an approved home for the purpose of adoption.

572 "Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable
573 confinement of an adult as defined in § 63.2-1603.

574 "Adult day care center" means any facility that is either operated for profit or that desires licensure
575 and that provides supplementary care and protection during only a part of the day to four or more aged,
576 infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by
577 the State Board of Health or the Department of Behavioral Health and Developmental Services, and (ii)
578 the home or residence of an individual who cares for only persons related to him by blood or marriage.
579 Included in this definition are any two or more places, establishments or institutions owned, operated or
580 controlled by a single entity and providing such supplementary care and protection to a combined total
581 of four or more aged, infirm or disabled adults.

582 "Adult exploitation" means the illegal, unauthorized, improper, or fraudulent use of an adult as
583 defined in § 63.2-1603 or his funds, property, benefits, resources, or other assets for another's profit,
584 benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives
585 the adult of his rightful use of or access to such funds, property, benefits, resources, or other assets. "Adult
586 exploitation" includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or
587 an intentional failure to use the financial resources of an adult in a manner that results in neglect of
588 such adult; (ii) the acquisition, possession, or control of an adult's financial resources or property
589 through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for
590 goods or services or perform services against his will for another's profit, benefit, or advantage if the
591 adult did not agree, or was tricked, misled, or defrauded into agreeing, to pay for such goods or services
592 or to perform such services.

593 "Adult foster care" means room and board, supervision, and special services to an adult who has a
594 physical or mental condition. Adult foster care may be provided by a single provider for up to three
595 adults. "Adult foster care" does not include services or support provided to individuals through the
596 Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9.

597 "Adult neglect" means that an adult as defined in § 63.2-1603 is living under such circumstances
598 that he is not able to provide for himself or is not being provided services necessary to maintain his
599 physical and mental health and that the failure to receive such necessary services impairs or threatens to
600 impair his well-being. However, no adult shall be considered neglected solely on the basis that such
601 adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical
602 care, provided that such treatment or care is performed in good faith and in accordance with the
603 religious practices of the adult and there is a written or oral expression of consent by that adult.

604 "Adult protective services" means services provided by the local department that are necessary to
605 protect an adult as defined in § 63.2-1603 from abuse, neglect or exploitation.

606 "Assisted living care" means a level of service provided by an assisted living facility for adults who
607 may have physical or mental impairments and require at least a moderate level of assistance with
608 activities of daily living.

609 "Assisted living facility" means any congregate residential setting that provides or coordinates
610 personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for
611 the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for
612 in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board

of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.), but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

"Auxiliary grants" means cash payments made to certain aged, blind or disabled individuals who receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive these benefits except for excess income.

"Birth family" or "birth sibling" means the child's biological family or biological sibling.

"Birth parent" means the child's biological parent and, for purposes of adoptive placement, means parent(s) by previous adoption.

"Board" means the State Board of Social Services.

"Child" means any natural person who is (i) under 18 years of age or (ii) for purposes of the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9, under 21 years of age and meets the eligibility criteria set forth in § 63.2-919.

"Child-placing agency" means (i) any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to § 63.2-1819, (ii) a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221, or (iii) an entity that assists parents with the process of delegating parental and legal custodial powers of their children pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20. "Child-placing agency" does not include the persons to whom such parental or legal custodial powers are delegated pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child-protective services" means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child support services" means any civil, criminal or administrative action taken by the Division of Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or collect child support, or child and spousal support.

"Child-welfare agency" means a child-placing agency, children's residential facility, or independent foster home.

"Children's residential facility" means any facility, child-caring institution, or group home that is maintained for the purpose of receiving children separated from their parents or guardians for full-time care, maintenance, protection and guidance, or for the purpose of providing independent living services to persons between 18 and 21 years of age who are in the process of transitioning out of foster care. Children's residential facility shall not include:

1. A licensed or accredited educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation;

2. An establishment required to be licensed as a summer camp by § 35.1-18; and

3. A licensed or accredited hospital legally maintained as such.

"Commissioner" means the Commissioner of the Department, his designee or authorized representative.

"Department" means the State Department of Social Services.

"Department of Health and Human Services" means the Department of Health and Human Services of the United States government or any department or agency thereof that may hereafter be designated as the agency to administer the Social Security Act, as amended.

"Disposable income" means that part of the income due and payable of any individual remaining after the deduction of any amount required by law to be withheld.

"Energy assistance" means benefits to assist low-income households with their home heating and

cooling needs, including, but not limited to, purchase of materials or substances used for home heating, repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

"Family and permanency team" means the group of individuals assembled by the local department to assist with determining planning and placement options for a child, which shall include, as appropriate, all biological relatives and fictive kin of the child, as well as any professionals who have served as a resource to the child or his family, such as teachers, medical or mental health providers, and clergy members. In the case of a child who is 14 years of age or older, the family and permanency team shall also include any members of the child's case planning team that were selected by the child in accordance with subsection A of § 16.1-281.

"Federal-Funded Kinship Guardianship Assistance program" means a program consistent with 42 U.S.C. § 673 that provides, subject to a kinship guardianship assistance agreement developed in accordance with § 63.2-1305, payments to eligible individuals who have received custody of a child of whom they had been the foster parents.

"Fictive kin" means persons who are not related to a child by blood or adoption but have an established relationship with the child or his family.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board where legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency. "Foster care placement" does not include placement of a child in accordance with a power of attorney pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20.

"Foster home" means a residence approved by a child-placing agency or local board in which any child, other than a child by birth or adoption of such person or a child who is the subject of a power of attorney to delegate parental or legal custodial powers by his parents or legal custodian to the natural person who has been designated the child's legal guardian pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20 and who exercises legal authority over the child on a continuous basis for at least 24 hours without compensation, resides as a member of the household.

"General relief" means money payments and other forms of relief made to those persons mentioned in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with § 63.2-401.

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person; (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8; and (iii) a home in which are received only children who are the subject of a properly executed power of attorney pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20.

"Independent living" means a planned program of services designed to assist a child age 16 and over and persons who are former foster care children or were formerly committed to the Department of Juvenile Justice and are between the ages of 18 and 21 in transitioning to self-sufficiency.

"Independent living arrangement" means placement of (i) a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency by the local board or licensed child-placing agency or (ii) a child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department of Juvenile Justice immediately prior to placement by the Department of Juvenile Justice, in a living arrangement in which such child or person does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. "Independent living services" may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years; (ii) is between the ages of 18 and 21 and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local board of social services; or (iii) is a child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department of Juvenile Justice immediately prior to placement in an independent living arrangement. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an

owner, officer, or employee or as an independent contractor with the residence.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Kinship care" means the full-time care, nurturing, and protection of children by relatives.

"Kinship guardian" means the adult relative of a child in a kinship guardianship established in accordance with § 63.2-1305 *or* 63.2-1306 who has been awarded custody of the child by the court after acting as the child's foster parent.

"Kinship guardianship" means a relationship established in accordance with § 63.2-1305 *or* 63.2-1306 between a child and an adult relative of the child who has formerly acted as the child's foster parent that is intended to be permanent and self-sustaining as evidenced by the transfer by the court to the adult relative of the child of the authority necessary to ensure the protection, education, care and control, and custody of the child and the authority for decision making for the child.

"Kinship Guardianship Assistance program" means a program consistent with 42 U.S.C. § 673 that provides, subject to a kinship guardianship assistance agreement developed in accordance with § 63.2-1305, payments to eligible individuals who have received custody of a relative child of whom they had been the foster parents.

"Local board" means the local board of social services representing one or more counties or cities.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Local director" means the director or his designated representative of the local department of the city or county.

"Merit system plan" means those regulations adopted by the Board in the development and operation of a system of personnel administration meeting requirements of the federal Office of Personnel Management.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to the aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child care; and general relief.

"Qualified assessor" means an entity contracting with the Department of Medical Assistance Services to perform nursing facility pre-admission screening or to complete the uniform assessment instrument for a home and community-based waiver program, including an independent physician contracting with the Department of Medical Assistance Services to complete the uniform assessment instrument for residents of assisted living facilities, or any hospital that has contracted with the Department of Medical Assistance Services to perform nursing facility pre-admission screenings.

"Qualified individual" means a trained professional or licensed clinician who is not an employee of the local board of social services or licensed child-placing agency that placed the child in a qualified residential treatment program and is not affiliated with any placement setting in which children are placed by such local board of social services or licensed child-placing agency.

"Qualified residential treatment program" means a program that (i) provides 24-hour residential placement services for children in foster care; (ii) has adopted a trauma-informed treatment model that meets the clinical and other needs of children with serious emotional or behavioral disorders, including any clinical or other needs identified through assessments conducted pursuant to clause (viii) of this definition; (iii) employs registered or licensed nursing and other clinical staff who provide care, on site and within the scope of their practice, and are available 24 hours a day, 7 days a week; (iv) conducts outreach with the child's family members, including efforts to maintain connections between the child and his siblings and other family; documents and maintains records of such outreach efforts; and maintains contact information for any known biological family and fictive kin of the child; (v) whenever appropriate and in the best interest of the child, facilitates participation by family members in the child's treatment program before and after discharge and documents the manner in which such participation is facilitated; (vi) provides discharge planning and family-based aftercare support for at least six months after discharge; (vii) is licensed in accordance with 42 U.S.C. § 671(a)(10) and accredited by an organization approved by the federal Secretary of Health and Human Services; and (viii) requires that any child placed in the program receive an assessment within 30 days of such placement by a qualified

individual that (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based, validated, and functional assessment tool approved by the Commissioner of Social Services; (b) identifies whether the needs of the child can be met through placement with a family member or in a foster home or, if not, in a placement setting authorized by 42 U.S.C. § 672(k)(2), including a qualified residential treatment program, that would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals established for the child in his foster care or permanency plan; (c) establishes a list of short-term and long-term mental and behavioral health goals for the child; and (d) is documented in a written report to be filed with the court prior to any hearing on the child's placement pursuant to § 16.1-281, 16.1-282, 16.1-282.1, or 16.1-282.2.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. The definition of "residential living care" includes the services provided by independent living facilities that voluntarily become licensed.

"Sibling" means each of two or more children having one or more parents in common.

"Social services" means foster care, adoption, adoption assistance, child-protective services, domestic violence services, or any other services program implemented in accordance with regulations adopted by the Board. Social services also includes adult services pursuant to Article 4 (§ 51.5-144 et seq.) of Chapter 14 of Title 51.5 and adult protective services pursuant to Article 5 (§ 51.5-148) of Chapter 14 of Title 51.5 provided by local departments of social services in accordance with regulations and under the supervision of the Commissioner for Aging and Rehabilitative Services.

"Special order" means an order imposing an administrative sanction issued to any party licensed pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A special order shall be considered a case decision as defined in § 2.2-4001.

"State-Funded Kinship Guardianship Assistance program" means a program that provides payments to eligible individuals who have received custody of a relative child subject to a kinship guardianship assistance agreement developed in accordance with § 63.2-1306.

"Supervised independent living setting" means the residence of a person 18 years of age or older who is participating in the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9 where supervision includes a monthly visit with a service worker or, when appropriate, contracted supervision. "Supervised independent living setting" does not include residential facilities or group homes.

"Temporary Assistance for Needy Families" or "TANF" means the program administered by the Department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the Temporary Assistance for Needy Families program for families in which both natural or adoptive parents of a child reside in the home and neither parent is exempt from Virginia Initiative for Education and Work (VIEW) participation under § 63.2-609.

"Title IV-E Foster Care" means a federal program authorized under §§ 472 and 473 of the Social Security Act, as amended, and administered by the Department through which foster care is provided on behalf of qualifying children.

§ 63.2-905. Foster care services.

Foster care services are the provision of a full range of casework, treatment, and community services, including but not limited to independent living services, for a planned period of time to a child who is abused or neglected as defined in § 63.2-100 or in need of services as defined in § 16.1-228 and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board or the public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians, (iii) has been committed or entrusted to a local board or licensed child placing agency, or (iv) is living with a relative participating in the *Federal-Funded Kinship Guardianship Assistance program* set forth in § 63.2-1305 and developed consistent with 42 U.S.C. § 673. Foster care services also include the provision and restoration of independent living services to a person who is over the age of 18 years but who has not yet reached the age of 21 years, in accordance with § 63.2-905.1.

§ 63.2-906. Foster care plans; permissible plan goals; court review of foster children.

A. Each child who is committed or entrusted to the care of a local board or to a licensed child-placing agency or who is placed through an agreement between a local board and the parent, parents or guardians, where legal custody remains with the parent, parents or guardians, shall have a foster care plan prepared by the local department, the child welfare agency, or the family assessment and planning team established pursuant to § 2.2-5207, as specified in § 16.1-281. The representatives of such local department, child welfare agency, or team shall (i) involve the child's parent(s) in the

development of the plan, except when parental rights have been terminated or the local department or child welfare agency has made diligent efforts to locate the parent(s) and such parent(s) cannot be located, and any other person or persons standing in loco parentis at the time the board or child welfare agency obtained custody or the board or the child welfare agency placed the child and (ii) for any child for whom reunification remains the goal, meet and consult with the child's parent(s) or other person standing in loco parentis, provided that the parent(s) or other person has been located and parental rights have not been terminated, no less than once every two months and at all critical decision-making points throughout the child's foster care case. If reunification is not the goal for the child, the local board, child welfare agency, or team shall provide information to the child's parents regarding the parents' option to voluntarily terminate parental rights, unless a parent's parental rights have been terminated. The representatives of such department, child welfare agency, or team shall involve the child in the development of the plan, if such involvement is consistent with the best interests of the child. In cases where either the parent(s) or child is not involved in the development of the plan, the department, child welfare agency, or team shall include in the plan a full description of the reasons therefor in accordance with § 16.1-281.

A court may place a child in the care and custody of (a) a public agency in accordance with § 16.1-251 or 16.1-252, and (b) a public or licensed private child-placing agency in accordance with § 16.1-278.2, 16.1-278.4, 16.1-278.5, 16.1-278.6, or 16.1-278.8. Children may be placed by voluntary relinquishment in the care and custody of a public or private agency in accordance with § 16.1-277.01 or §§ 16.1-277.02 and 16.1-278.3. Children may be placed through an agreement where legal custody remains with the parent, parents or guardians in accordance with §§ 63.2-900 and 63.2-903, or § 2.2-5208.

B. Each child in foster care shall be assigned a permanent plan goal to be reviewed and approved by the juvenile and domestic relations district court having jurisdiction of the child's case. Permissible plan goals are to:

1. Transfer custody of the child to his prior family;
2. Transfer custody of the child to a relative other than his prior family or to fictive kin for the purpose of establishing eligibility for the *Federal-Funded Kinship Guardianship Assistance* program pursuant to § 63.2-1305;
3. Finalize an adoption of the child;
4. Place a child who is 16 years of age or older in permanent foster care;
5. Transition to independent living if, and only if, the child is admitted to the United States as a refugee or asylee; or
6. Place a child who is 16 years of age or older in another planned permanent living arrangement in accordance with subsection A2 of § 16.1-282.1.

C. Each child in foster care shall be subject to the permanency planning and review procedures established in §§ 16.1-281, 16.1-282, and 16.1-282.1.

§ 63.2-1305. Federal-Funded Kinship Guardianship Assistance program.

A. The *Federal-Funded Kinship Guardianship Assistance* program is established to facilitate placements with relatives and ensure permanency for children for whom adoption or being returned home are not appropriate permanency options. Kinship guardianship assistance payments may include Title IV-E maintenance payments, state-funded maintenance payments, state special services payments, and nonrecurring expense payments made pursuant to this section.

B. A child is eligible for kinship guardianship assistance under the program if:

1. The child has been removed from his home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child;
2. The child was eligible for foster care maintenance payments under 42 U.S.C. § 672 or under state law while residing for at least six consecutive months in the home of the prospective kinship guardian;
3. Being returned home or adopted is not an appropriate permanency option for the child;
4. The child demonstrates a strong attachment to the prospective kinship guardian, and the prospective kinship guardian has a strong commitment to caring permanently for the child; and
5. The child has been consulted regarding the kinship guardianship if the child is 14 years of age or older.

C. If a child does not meet the eligibility criteria set forth in subsection B but has a sibling who meets such criteria, the child may be placed in the same kinship guardianship with his eligible sibling, in accordance with 42 U.S.C. § 671(a)(31), if the local department and kinship guardian agree that such placement is appropriate. In such cases, kinship guardianship assistance may be paid on behalf of each sibling so placed.

D. In order to receive payments under 42 U.S.C. § 674(a)(5) or pursuant to the Children's Services Act (§ 2.2-5200 et seq.), the local department and the prospective kinship guardian of a child who meets

the requirements of subsection B shall enter into a written kinship guardianship assistance agreement negotiated by the Department and containing terms providing for the following:

1. The amount of each kinship guardianship assistance payment, the manner in which such payments will be provided, and the manner in which such payments may be adjusted periodically, in consultation with the kinship guardian, on the basis of the circumstances of the kinship guardian and the needs of the child;

2. The additional services or assistance, if any, for which the child and kinship guardian will be eligible under the agreement;

3. The procedure by which the kinship guardian may apply for additional services as needed;

4. Subject to 42 U.S.C. § 673(d)(1)(D), assurance that the local department shall pay the total cost of nonrecurring expenses associated with obtaining kinship guardianship of the child, to the extent that the total cost does not exceed \$2,000; and

5. Assurance that the agreement shall remain in effect without regard to the state of residency of the kinship guardian.

E. A kinship guardianship assistance payment on behalf of a child pursuant to this section shall not exceed the foster care maintenance payment that would have been paid on behalf of the child had the child remained in a foster family home.

F. The Board shall promulgate regulations for the *Federal-Funded Kinship Guardianship Assistance* program that are necessary to comply with Title IV-E requirements, including those set forth in 42 U.S.C. § 673. The regulations may set forth qualifications for kinship guardians, the conditions under which a kinship guardianship may be established, the requirements for the development and amendment of a kinship guardianship assistance agreement, and the manner of payments on behalf of siblings placed in the same household.

G. 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.

§ 63.2-1306. State-Funded Kinship Guardianship Assistance program.

A. *The State-Funded Kinship Guardianship Assistance program is established to facilitate placements with relatives and ensure permanency for children in foster care. Kinship guardianship assistance payments may include state-funded maintenance payments made pursuant to this section.*

B. *A child is eligible for kinship guardianship assistance under the program if:*

1. *The child has been removed from his home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child;*

2. *The child has been in the custody of the local department for at least 90 days;*

3. *The child demonstrates a strong attachment to the prospective kinship guardian, and the prospective kinship guardian has a strong commitment to caring permanently for the child;*

4. *The child has been consulted regarding the kinship guardianship if the child is 14 years of age or older;*

5. *Custody of the child by the prospective kinship guardian is in the child's best interest; and*

6. *The child is not eligible for the Federal-Funded Kinship Guardianship Assistance program set forth in § 63.2-1306.*

C. *If a child does not meet the eligibility criteria set forth in subsection B but has a sibling who meets such criteria, the child may be placed in the same kinship guardianship with his eligible sibling if the local department and kinship guardian agree that such placement is appropriate. In such cases, kinship guardianship assistance may be paid on behalf of each sibling so placed.*

D. *A prospective kinship guardian is eligible for kinship guardianship assistance under the program if he:*

1. *Completes the relative foster home approval process; or*

2. *Qualifies for a waiver from one or more components of such process pursuant to Board regulations, completes a background check in accordance with § 63.2-1720, and completes a home study in accordance with § 63.2-904.*

E. *In order to receive payments pursuant to the Children's Services Act (§ 2.2-5200 et seq.), the local department and the prospective kinship guardian of a child who meets the requirements of subsection B shall enter into a written kinship guardianship assistance agreement with the Department and containing terms providing for the following:*

1. *The amount of each kinship guardianship assistance payment, the manner in which such payments will be provided, and the manner in which such payments may be adjusted periodically, in consultation with the kinship guardian, on the basis of the circumstances of the kinship guardian and the needs of the child; and*

2. *Assurance that the agreement shall remain in effect without regard to the state of residency of the kinship guardian.*

F. *For purposes of this section, "relative" means an adult who is (i) related to the child by blood,*

982 *marriage, or adoption or (ii) fictive kin of the child.*

983 **2. The Board of Social Services (the Board) shall promulgate regulations to implement the**
984 **provisions of this act. Such regulations shall include conditions for establishing a kinship**
985 **guardianship, requirements for the development and amendment of a kinship guardianship**
986 **assistance agreement, and circumstances that qualify a prospective kinship guardian for exemption**
987 **from the relative foster home approval process. The Board's initial adoption of regulations**
988 **necessary to implement the provisions of this act shall be exempt from the Administrative Process**
989 **Act (§ 2.2-4000 et seq. of the Code of Virginia), except that the Board shall provide an opportunity**
990 **for public comment on the regulations prior to adoption.**

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