



**FINAL REPORT OF THE
VIRGINIA COMMISSION ON YOUTH**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**

Temporary Placements of Children

REPORT DOCUMENT 13

**COMMONWEALTH OF VIRGINIA
RICHMOND
2016**



COMMONWEALTH of VIRGINIA
Commission on Youth

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TO: The Honorable Terry McAuliffe, Governor of Virginia

and

Members of the Virginia General Assembly

During the 2015 General Assembly Session, Delegate Kathy J. Byron introduced House Bill 2034. It provides that a parent or legal custodian of a minor may delegate to another person by a properly executed power of attorney any powers regarding care, custody, or property of the minor for a period not exceeding one year. Members of the House Courts of Justice Committee reviewed the bill and determined that further study would be appropriate. The Committee passed the bill by indefinitely and requested that the Commission on Youth study the provisions set forth in the bill. On May 5, 2015, the Commission adopted a study plan for this request. At its October 20, 2015 meeting, the Commission approved a recommendation for this study. This recommendation is included in this report.

This report represents the work of many government and private agencies and individuals who provided input to the study. The Commission on Youth gratefully acknowledges their support to this effort.

Respectfully submitted,

A handwritten signature in cursive script that reads "Christopher K. Peace".

Christopher K. Peace

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I. Authority for Study

Section 30-174 of the *Code of Virginia* establishes the Commission on Youth and directs it to "...study and provide recommendations addressing the needs of and services to the Commonwealth's youth and their families." This section also directs the Commission to "...encourage the development of uniform policies and services to youth across the Commonwealth and provide a forum for continuing review and study of such services."

Section 30-175 of the *Code of Virginia* outlines the powers and duties of the Commission on Youth and directs it to "[u]ndertake studies and to gather information and data...and to formulate and report its recommendations to the General Assembly and the Governor."

During the 2015 General Assembly Session, Delegate Kathy J. Byron introduced House Bill 2034. It provides that a parent or legal custodian of a minor may delegate to another person by a properly executed power of attorney any powers regarding care, custody, or property of the minor for a period not exceeding one year. Members of the House Courts of Justice Committee reviewed the bill and determined that further study would be appropriate. The Committee passed the bill by indefinitely and requested that the Commission on Youth study the provisions set forth in the bill. The Commission on Youth designed a study plan to consider the implications of various policy options to improve Virginia's current process of providing parents with support and respite during difficult times while having children stay in a safe environment with the ultimate goal of reunification.

II. Members Appointed to Serve

The Commission on Youth is a standing legislative commission of the Virginia General Assembly. It is comprised of twelve members: six Delegates, three Senators and three citizens appointed by the Governor.

Members of the Virginia Commission on Youth are:

- Delegate Christopher K. Peace, Mechanicsville, Chair
- Delegate Richard L. Anderson, Woodbridge
- Delegate Mamy E. BaCote, Newport News
- Delegate Richard P. "Dickie" Bell, Staunton
- Delegate Peter F. Farrell, Richmond
- Delegate Mark L. Keam, Vienna
- Senator Barbara A. Favola, Arlington, Vice Chair
- Senator David W. Marsden, Burke
- Senator Stephen H. Martin, Chesterfield
- Deirdre S. Goldsmith, Abingdon
- Frank S. Royal, Jr., M.D., Richmond
- Charles H. Slemph, III, Esq., Norton

III. Executive Summary

During the 2015 General Assembly Session, Delegate Kathy J. Byron introduced House Bill 2034. It provides that a parent or legal custodian of a minor may delegate to another person by a properly executed power of attorney any powers regarding care, custody, or property of the

minor for a period not exceeding one year. Members of the House Courts of Justice Committee reviewed the bill and determined that further study would be appropriate. The Committee passed the bill by indefinitely and requested that the Commission on Youth study the provisions set forth in the bill. The Commission on Youth designed a study plan to consider the implications of various policy options to improve Virginia's current process of providing parents with support and respite during difficult times while having children stay in a safe environment with the ultimate goal of reunification. Text of the introduced version of House Bill 2034 can be found under Appendix A.

After presentations of the findings and recommendations at the Commission's September 8 and October 20, 2015 meetings, and receipt of public comment, the Commission on Youth approved the following recommendation:

Recommendation 1

Request a budget amendment in the 2016 budget (caboose) and 2016 – 2018 biennial budget for the Department of Social Services to partner with Patrick Henry Family Services to implement a pilot program in the area encompassing Planning District 11 (Amherst, Appomattox, Bedford, Campbell Counties and the City of Lynchburg) for the temporary placements of children for children and families in crisis.

This pilot program would allow a parent or legal custodian of a minor, with the assistance of Patrick Henry Family Services, to delegate to another person by a properly executed power of attorney any powers regarding care, custody, or property of the minor for temporary placement for a period that is not greater than 90 days. This program would allow for an option of a one-time 90 day extension. Prior to the expiration of the 180 day period, if the child is unable to return to his home, then Patrick Henry Family Services shall contact the local department of social services and request an assessment of the child and an evaluation of services needed and to determine if a petition to assess the care and custody of the child should be filed in the local juvenile and domestic relations court.

The Department of Social Services shall ensure that this pilot program meets the following specific programmatic and safety requirements outlined in 22 VAC 40-131 and 22 VAC 40-191.

- The pilot program organization shall meet the background check requirements described in 22 VAC 40-191.
- The pilot program organization shall provide pre-service and ongoing training for temporary placement providers and staff (22 VAC 40-131-210 and 22 VAC 40-131-150).
- The pilot program organization shall develop and implement written policies and procedures for governing active and closed cases, admissions, monitoring the administration of medications, prohibiting corporal punishment, ensuring that children are not subjected to abuse or neglect, investigating allegations of misconduct toward children, implementing the child's back-up emergency care plan, assigning designated casework staff, management of all records, discharge policies, and the use of seclusion and restraint (22 VAC 40-131-90).

The Department of Social Services shall evaluate the pilot program and determine if this model of prevention is effective. A report of the evaluation findings and recommendations shall be submitted to the Governor and Chairs of the House Appropriations and Senate Finance Committees as well as the Commission on Youth by December 1, 2017.

IV. Study Goals and Objectives

At the Commission on Youth meeting on May 5, 2015, Commission on Youth staff was directed to assess the issues surrounding Virginia's current process of providing parents with support and respite during difficult times while having children stay in a safe environment with the ultimate goal of reunification.

A. IDENTIFIED ISSUES

- Virginia law requires licensing of child welfare agencies as well as independent foster homes in accordance with § 63.2-1701 of the *Code of Virginia*.
- The Virginia Department of Social Services' permanency efforts are implemented in part through the Promoting Safe and Stable Families Program, which includes family support services designed to help parents care for their children's well-being before a crisis occurs.
- The practice of kinship diversion is considered first in Virginia, which goes in support of increased acceptance of working with relatives and on prevention services. Relatives also may accept children under formal kinship care arrangements, but first must qualify as foster parents; however, these parents are entitled to additional support and subsidies.
- In 2014, legislation was introduced by Senator Janet Howell and approved by the General Assembly and Governor directing the Department of Social Services to review current policies governing kinship care placements and propose regulations governing kinship care placements. The bill directs the Department of Social Services to report its recommendations and findings to the Governor, the General Assembly, and the Board of Social Services by January 1, 2016.
- Section 22.1-3(4) of the *Code of Virginia* currently acknowledges the right of an adult relative who provides informal kinship care to access free public education for the child where the adult resides by utilizing an affidavit or power of attorney; however, this provision is set to sunset June 30, 2016.

B. STUDY ACTIVITIES

At the Commission's meeting on May 5, 2015, the Commission approved the study plan which included the following activities:

- Conduct extensive background and literature reviews
 - Child Welfare League of America
 - Casey Family Programs
 - National Governors Association Center for Best Practices
 - Other states' policies and approach
 - Best-practices in protecting children at risk for foster care
- Review federal legislation/statutes
 - *Child Abuse Prevention and Treatment Act of 2010*
 - *Fostering Connections to Success and Increasing Adoptions Act of 2008*
 - Titles IV-B and IV-E of the Social Security Act
 - *Adoption and Safe Families Act of 1997*
 - Temporary Assistance for Needy Families (TANF) block grant
 - The National Family Caregiver Support Program
- Review and analyze Virginia laws, regulations, and practices
 - Foster care statutes and regulations

- Kinship care diversion
 - Temporary entrustment agreements
 - Standards for Licensed Placing Agencies
 - Promoting Safe and Stable Families Program
 - Children’s Services Act (CSA) Parental Agreements
 - Child-placing agency or independent foster home licensure regulations
 - Receive information from state and local departments of social services
 - Other related practices
- Analyze other states’ practices and procedures
 - Foster care diversion
 - Implementation of Safe Families
- Review Diversion and Respite Programs
 - Safe Families for Children
 - Other programs
- Identify impacted agencies and stakeholder organizations
 - Advocacy organizations
 - Family Assessment and Planning Teams (FAPT)
 - Guardians Ad Litem
 - Judges/Attorneys
 - Local departments of social services
 - Office of Comprehensive Services for At-Risk Youth and Families
 - Office of Executive Secretary of the Supreme Court of Virginia
 - Parent representatives/kinship caregivers
 - Private child-placing agencies
 - Safe Families for Children
 - Virginia Department of Social Services
 - Virginia Department of Social Services’ Attorneys
 - Virginia’s Court Appointed Special Advocates
- Invite key stakeholders and impacted agencies to participate in round table panel
- Develop recommendations
 - Synthesize recommendations
 - Develop recommendations
- Solicit feedback to recommendations
 - Refine findings and recommendations
 - Present findings and recommendations to the Commission on Youth
 - Prepare final report

V. Methodology and Objectives

The findings of the study are based on several distinct research activities conducted by the Commission on Youth.

A. RESEARCH AND ANALYSIS

Commission staff conducted a review of other states' laws related to nonprofit volunteer programs that serve vulnerable families in crisis. The program model that Commission staff focused upon was the Safe Families for Children Temporary Placements of Children model. This process involved a comparison of bills passed or considered in a number of states. These bills were analyzed by reading or listening to testimony given regarding the Safe Families model and by researching the social services laws in these various states. This process also involved the research and comparison of policy manuals and information related to licensure exemption, safety and background checks, training for providers and staff, joint custody, and use of a power of attorney to transfer certain parental rights in Virginia.

Additionally, Commission staff looked at states that have implemented the Uniform Guardianship and Protective Proceedings Act, which provides that a parent may delegate to another person any power regarding care, custody or property of a minor. Staff consulted various resources including Uniform Laws Annotated and the Grandfamilies State Law and Policy Resource Center to provide clarity on the use and limitations of delegation of parental authority in other states.

The Virginia Department of Social Services is responsible for overseeing the licensure for organizations which conduct child-placing activities, which includes performing home studies, counseling parents, and assessing a child's service and placement needs. Accordingly, Virginia Department of Social Services laws and regulations were reviewed. Those laws and regulations included licensure of independent foster homes and child-placing agencies, temporary entrustment and Children's Services Act (CSA) Parental Agreement, school enrollment and kinship diversion, and foster care prevention.

B. STAKEHOLDER INTERVIEWS

Stakeholder interviews played a vital role in the development of study findings and recommendations. These interviews were conducted in order to gather input about the Safe Families for Children Temporary Placements of Children model. Commission staff met in Lynchburg with Patrick Henry Family Services/Safe Families staff, representatives from the Department of Social Services, and the Honorable Kathy J. Byron, Virginia House of Delegates to discuss the Safe Families for Children Temporary Placements of Children model. Commission staff also convened a study group to assist in discussing various proposed recommendations. The Commission on Youth worked with representatives of the following:

- Be Strong Families
- Children's Home Society
- The Foundation for Government Accountability
- Local departments of social services
- Office of the Attorney General
- Patrick Henry Family Services
- Safe Families for Children
- Trinity Family Life Center

- Virginia Bar Association Commission on the Needs of Children
- Virginia Department of Social Services
- Virginia Family Law Coalition
- Virginia Senate Finance Committee

Invited Study Group participants:

- The Honorable Kathy J. Byron, Virginia House of Delegates
- Patrick Henry Family Services/Safe Families for Children representative
- Virginia Commission on Youth staff
- Virginia Department of Social Services representative
- Virginia Poverty Law Center representative
- Virginia Supreme Court Office of the Executive Secretary representative
- Voices for Virginia's Children

VI. Background

The results of the research and analysis conducted by Commission staff are summarized below.

A. REVIEW OF PREVENTION SERVICES IN VIRGINIA.

In Virginia, prevention services exist on a continuum. Services given prior to or in the absence of a child protective services referral are known as early prevention services. These services are often referred to as primary and secondary prevention services. According to the *Virginia Department of Social Services Child and Family Services Manual: Overview of Prevention for Practice and Administration*, these services include public education and awareness services provided to the general public (primary), as well as services provided to specific groups of parents or specific families whose children are at risk of maltreatment or out-of-home care (secondary).¹ Furthermore, “early prevention services are designed to strengthen and support families and increase their self-sufficiency and personal accountability. Establishing collaborative partnerships within the community and engaging families in these volunteer services are essential to achieving desired outcomes.”²

Also included on this continuum are tertiary services, which direct activities to parents and children that have experienced maltreatment. These services include foster care prevention services and are provided to children and families in their homes and communities to prevent the need for foster care placements.³ Foster care prevention services are available to children who have been abused or neglected as defined in §63.2-100 or in need of services as defined in §16.1-228 of the *Code of Virginia*; and according to the Department of Social Services out-of-home placements are not considered prevention services.⁴ In addition, foster care prevention

¹ Virginia Department of Social Services. (2012). *Child and Family Services Manual Overview of Prevention for Practice and Administration*. Retrieved from: http://www.dss.virginia.gov/files/division/dfs/ca_fc_prevention/early_prevention/manual/section_01.pdf.

² Ibid.

³ Ibid.

⁴ Virginia Department of Social Services. (2015). *Child and Family Services Manual Entering Foster Care*. Retrieved from: http://www.dss.virginia.gov/files/division/dfs/fc/intro_page/guidance_manuals/fc/07_2015/Section_03_Entering_Foster_Care.pdf.

services of a limited duration do not require court involvement. The role of foster care prevention services is to increase protective factors. Protective factors are those needed by families to act as a shield against abuse and neglect and they include, parental resilience, social connections, knowledge of parenting and child development, concrete support in times of need, children’s social and emotional competence, and nurturing and attachment.⁵ Foster care prevention services include “a full range of casework, treatment, and community services.”⁶ Section 2.2-5211 of the *Code of Virginia* establishes the funding available for foster care prevention services. Table 1 below explains details the continuum of prevention that is available in Virginia.

Table 1

Continuum of Prevention⁷

Service →				
Early Prevention Prior To A Valid Child Protective Services (CPS) Referral		Prevention Provided After Receipt Of A Current, Valid Child Protective Services (CPS) Referral		
Primary Public Education and Awareness Prevention Services	Secondary Prevention Services	Tertiary Prevention Services provided through Child Protective Services	Secondary or Tertiary Prevention services provided through Foster Care AFTER removal of a child	Secondary or Tertiary Prevention Services provided AFTER adoptive placement
Target Population →				
General public	<ul style="list-style-type: none"> • Groups of families and/or • Individual families at risk of abuse/neglect, and/or out of home care 	<ul style="list-style-type: none"> • Birth families who have suspected or confirmed abuse and/or neglect and • Alternative families identified by parents as caretakers to prevent removal and foster care placement 	<ul style="list-style-type: none"> • Potential foster families, • Approved foster families • Birth families whose children have been removed • Birth families whose children have been returned to them and • Foster care children in independent living arrangements 	<ul style="list-style-type: none"> • Potential adoptive families • Approved adoptive families • Birth families who may continue contact with children
Outcome →				
Helping children thrive / reducing the risk of abuse/neglect in the community and supporting families so that all children can remain safely at home	Reducing the risk of abuse/neglect in high risk groups or high risk individual families and increasing family stability	Reducing risk of future harm in birth families or other alternative families used to prevent foster care and increasing family stability	Helping children heal and reducing risk of future harm through reabuse or placement disruptions in birth and foster families	Helping children heal and reducing risk of future harm through reabuse or placement disruption / dissolution in adoptive families

A study on early prevention in Virginia was conducted in the 2011 by the Department of Social Services. The study, including a survey, was conducted to find out the types of early prevention services that local departments provide to families, as well as the populations who

⁵ Virginia Department of Social Services. (2012). *Child and Family Services Manual Overview of Prevention for Practice and Administration*. Retrieved from:

http://www.dss.virginia.gov/files/division/dfs/ca_fc_prevention/early_prevention/manual/section_01.pdf.

⁶ Va. Code §63.2-905.

⁷ Virginia Department of Social Services. *The Prevention Continuum*. Retrieved from:

http://www.dss.virginia.gov/files/division/dfs/ca_fc_prevention/early_prevention/about/continuum.pdf.

receive the services and the funding sources that are used to purchase services.⁸ Ninety-six percent of the local agencies responded to the survey. The survey revealed that 74 percent of local department of social services agencies provide early prevention services to the general population, 32 percent provide services to high risk groups, and 94 percent provide services to individual families prior to a valid Child Protective Services referral.⁹ The study also revealed that services to the general public and to high risk groups are most often funded by Promoting Safe and Stable Families and local community resources. Promoting Safe and Stable Families, Children’s Services Act (CSA), and Family Preservation and Support are the most frequently used funding resources for individual families.

Current funding sources for early prevention services remain similar to 2011 sources, and the utilization continues to vary depending on the recipient or intended audience. Table 2 below shows the various types of funding sources available based on audience.

Table 2

Funding sources used by local departments of social services for Early Prevention Services¹⁰

Public Education and Awareness	High-Risk Families	Individual Families
<ul style="list-style-type: none"> • Promoting Safe and Stable Families, • Local Community Based Resources, • 100% Local Funds, • Grant Funding, • Community Block Grants, or • United Way 	<ul style="list-style-type: none"> • Promoting Safe and Stable Families, • Family Preservation and Support, • CSA Funds, • Local Community Based Resources, • 100% Local Funds, • Medicaid, • Grant Funding, • Adoption Assistance, • Foundations and Corporations, • United Way, • Community Block Grants, • Donations, • Quality Initiative, or • 854 Administrative Funds 	<ul style="list-style-type: none"> • CSA Funds, • Family Preservation and Support, • Promoting Safe and Stable Families, • Medicaid, • Local Community Based Resources, • 100% Local only Funds, • Adoption Assistance, • TANF/VIEW/SNAP, • Grant Funding, • United Way, • Foundations and Corporations, • Community Block Grants, • Private Donations, or • 854 Administrative Funds

⁸ Virginia Department of Social Services. (2011). *Findings from the 2011 Division of Family Services (DFS) Prevention Survey*. Retrieved from: http://www.dss.virginia.gov/files/division/dfs/ca_fc_prevention/early_prevention/studies_survey/summary_analysis_final_review.pdf.

⁹ Ibid.

¹⁰ Virginia Department of Social Services. *Funding Used by LDSS for Early Prevention Services*. Retrieved from: http://www.dss.virginia.gov/files/division/dfs/ca_fc_prevention/early_prevention/resources/additional/ldss_funding.pdf.

Despite the fact that there are a number of potential sources of funding for early prevention services, they are not necessarily available to all localities or being accessed. According to the Department of Social Services, grant funding is used by 18 localities for public education and awareness, seven localities for high-risk families, and 16 for individual families.¹¹ One particularly important source of early prevention services is the Promoting Safe and Stable Families program. Promoting Safe and Stable Families is authorized under Title IV-B, Subpart II of the Social Security Act. Promoting Safe and Stable Families funds are allocated to localities based on community plans, and the funds given must be used evenly among four service categories.¹² These categories include family support services, family preservation services, time-limited reunification services, and adoption promotion and support services. The current amount of yearly estimated Promoting Safe and Stable Families funding available to Virginia is \$5,104,620.¹³

The two categories most applicable to early prevention are family support services and family preservation services. Family support services are primarily community-based preventative activities that promote the safety and well-being of children and families, promote parental competencies, enable families to use community resources, create supportive networks, and strengthen parental relationships. Family preservation services, on the other hand, are designed to help families deal with crises and maintain the safety of children in their own homes.¹⁴ For these two categories, the Department of Social Services indicated that based on localities reporting, in state fiscal year 2014, 11,327 children and 7,895 families were served.¹⁵

While Promoting Safe and Stable Families and other funding sources attempt to address problems in the home before they arise to unnecessary family separation and reoccurrence of maltreatment, many children and families in Virginia remain in need of services or are unable to utilize current services before a small crisis or problem gets to big too handle without Child Protective Services involvement. The Department of Social Services reported that in 2014 33,736 children were referred to Child Protective Services as possible victims of abuse and neglect and were given a family assessment.¹⁶ A family assessment indicates that a Child Protective Services worker has developed a written safety plan and provided or arranged for services, if needed. In addition, 6,792 children were included in founded reports of abuse and neglect meaning that a review of the facts gathered during the investigation met the preponderance of evidence. Table 3 below shows the child abuse and neglect outcomes for the past five years under the differential response system.

¹¹ Ibid.

¹² Virginia Department of Social Services. (2015). *Promoting Safe & Stable Families (PSSF) Program Renewal Application Information for Fiscal Year 2016*. Retrieved from: <http://www.dss.virginia.gov/files/division/dfs/pssf/planning/032-04-0052-03-eng.pdf>.

¹³ Virginia Department of Social Services. *PSSF Estimated Allocations Plan*. Retrieved from: http://www.dss.virginia.gov/files/division/dfs/pssf/planning/PSSF_estimated_allocations.pdf.

¹⁴ Ibid.

¹⁵ Virginia Department of Social Services. (2014). *Virginia's Annual Report on the Five Year Child Welfare Plan*. Retrieved from: http://www.dss.virginia.gov/files/about/reports/children/annual_progress_services/2014.pdf.

¹⁶ Virginia Department of Social Services. *Child Abuse and Neglect in Virginia July 1, 2013 – June 20, 2014*. Retrieved from: https://www.dss.virginia.gov/files/about/reports/children/cps/all_other/2014/CPS_Fact_Sheet_SFY_14.pdf.

Table 3

Children in Completed Reports on Abuse and Neglect SFY 2010 to SFY 2014¹⁷

Fiscal Year	Founded	Unfounded	Family Assessment	Total
2014	6,792	9,608	33,736	50,136
2013	6,205	8,848	36,293	51,346
2012	6,365	8,974	37,336	52,675
2011	6,116	8,627	34,876	49,619
2010	6,234	8,187	34,185	48,606

Virginia continues to work towards addressing the causes and the challenges that arise once child abuse and neglect is reported. Prevention services in the Commonwealth have transformed and grown over the past several years starting with the Children’s Services System Transformation implemented in 2007. While the implementation of recent improvements have resulted in a decrease in the number of children in Virginia’s foster care system and an increase in the use of kinship care, the full-time care, nurturing, and protection of children by relatives, lack of funding and staffing is still a concern. According to the Children’s Services Act (CSA) Critical Services Gap presentation for fiscal year 2013, listed among the top five of statewide service gaps are parenting/family skills training and regular foster care/family care.¹⁸ As well, the top barriers highlighted to community service availability remain a need for a greater buy-in and support from local departments of social services’ line staff and a need for greater collaboration among community stakeholders.¹⁹

Use of family-driven services continues to be promoted in Virginia as a best practice model. Since early prevention services are mostly voluntary, they require that the family unit act as the primary decision maker, making it even more important that the services provided are family focused. As well as embracing family-driven services, the Department of Social Services stresses an entrepreneurial approach to program development and service delivery. This means thinking “out of the box” to provide services to assist families whose children are safe, but the family unit is struggling as a whole.²⁰ The Department of Social Services appears to be embracing this attitude as they work towards improving access and delivery of prevention services throughout Virginia.

B. CURRENT VIRGINIA PRACTICES LIMIT THE USE OF FOSTER CARE DIVERSION STRATEGIES AND RESPITE CARE.

Besides the prevention services described above, parents in Virginia have a limited number of options for obtaining care and support for their children during a time of crisis or emergency. These options, which fall short of Child Protective Services involvement, petitioning for relief of custody, or pursuing a permanent entrustment agreement, are limited by duration, what type of parents can use them, and what type of children can benefit. These options will be discussed in

¹⁷ Ibid.

¹⁸ The Office of Child Services. (2014). *FY13 CSA Critical Service Gaps*. [PowerPoint presentation].

¹⁹ Ibid.

²⁰ Virginia Department of Social Services. (2012). *Child and Family Services Manual Overview of Prevention for Practice and Administration*. Retrieved from: http://www.dss.virginia.gov/files/division/dfs/ca_fc_prevention/early_prevention/manual/section_01.pdf.

the following paragraphs.

Children's Services Act (CSA) Parental Agreement: A CSA Parental Agreement is an agreement between a parent and public agency other than a local department of social services. CSA Parental Agreements are only used when the local Family and Assessment Planning Team (FAPT) determines that a child requires placement outside of the home to address the child's service needs.²¹ However, the plan must be to return the child home. The out-of-home placement used in this type of agreement includes residential facilities, group homes, and treatment foster homes. In these types of placements, the parent retains legal custody of the child. In order for an out-of-home placement to occur, the agreement must be mutually agreed to by the FAPT and the parents, in the child's best interests, and the least restrictive setting to meet the child's needs. A similar type of arrangement where a local department of social services acts as the case manager is called a non-custodial foster care placement. However, unlike a CSA Parental Agreement, a non-custodial foster care placement requires court involvement.

Respite Care/Short-Term Foster Care: As defined in the *Virginia Department of Social Services Child and Family Services Manual: Identifying Services to Be Provided*, respite care is "a therapeutic support service designed to offer short-term relief to families caring for children by providing substitute care for children."²² The respite care provider must be approved by a local department of social services and this type of care can be provided for up to 30 days per year. Typically, respite care is provided for a day or two at a time. When used by foster care parents, the purpose behind respite care is to reduce foster home disruption and provide a stable foster care placement for the child.²³

Temporary Entrustment: Parents may voluntarily request that the local board of social services, a child welfare agency, or independent foster home take legal and physical custody of their child for a temporary period, up to 90 days, before petitioning the court.²⁴ Court approval is needed for a placement longer than 90 days and can be no longer than 180 days. While a condition for use of a temporary entrustment is to return the child home, this type of agreement may also be used for purposes of adoption planning. In addition to petitioning the court at 90 days, within 30 days of a stay longer than 90 days or within 60 days of stay that is less than 90 days a foster care plan must be submitted to the local juvenile and domestic relations court.²⁵

A recently defunct organization in Virginia called Volunteer Emergency Families for Children (VEFC) utilized temporary entrustments to place children with volunteer families willing to provide short-term emergency and respite care and provide a temporary home and shelter for children in crisis. It operated in Virginia from 1979 to 2012. This particular program was unique in that it was included in the Appropriations Act.²⁶ Smaller programs that utilize temporary entrustments operate in Virginia still. One such example is Children's Home Society. This

²¹ Virginia Department of Social Services. *Child Abuse and Neglect in Virginia July 1, 2013 – June 20, 2014*. Retrieved from:

https://www.dss.virginia.gov/files/about/reports/children/cps/all_other/2014/CPS_Fact_Sheet_SFY_14.pdf.

²² Virginia Department of Social Services. (2015). *Identifying Services to Be Provided*. Retrieved from: http://www.dss.virginia.gov/files/division/dfs/fc/intro_page/guidance_manuals/fc/07_2015/Section_12_Identifying_Services_to_be_Provided.pdf.

²³ Ibid.

²⁴ 22 VAC 40-141-85.

²⁵ Va. Code. §16.1-281

²⁶ Virginia Acts of Assembly - Chapter 665. (2015). Retrieved from: <http://budget.lis.virginia.gov/item/2015/1/HB1400/Chapter/1/341/>.

program provides temporary infant care for up to 90 days. In 2014, nine infants were placed by Children's Home Society for a total of 456 days of care.²⁷

Placing Agreement: A placing agreement allows a parent to place their child in an independent foster home for up to 180 days. This arrangement does not require a parent to relinquish legal custody of their child. If a child remains in the independent foster home under a placing agreement for a full 180 days, then the provider must contact a "local department of social services and request an assessment of the child and an evaluation of services needed to determine if a petition to assess the care and custody of the child should be filed in the local juvenile and domestic relations court."²⁸ An individualized service plan must be prepared for every child at the time of admission under a placing agreement, and it must be updated every 30 days.²⁹

C. KINSHIP CARE IS PART OF THE CONTINUUM OF CARE IN VIRGINIA AND DIFFERENT GRADATIONS OF OVERSIGHT EXIST.

Kinship care is defined as the full time care, nurturing, and protection of children by a relative, and it is a method of placement supported by the Virginia Department of Social Services.³⁰ Two options for kinship care are available in Virginia – formal and informal. Formal kinship care is done under the direction of a local department of social services, and the child is placed with a relative who is an approved foster parent. This practice is governed by § 63.2-900.1 of the *Code of Virginia*. Informal kinship care is a practice in which local departments of social services may facilitate the placement of a child with a relative to prevent a foster care placement. Unlike formal kinship care, informal kinship care placements are typically made independent of the courts. These placements tend to lack government oversight.

In Virginia, the majority of kinship care arrangements are informal. However, there is no explanation of informal kinship care in statute. Informal kinship care is used by a number of Virginia families because many relatives do not want to subject themselves to the process of becoming a foster parent or to the continued monitoring as foster parents. According to the 2011 Prevention Survey conducted by the Department of Social Services, 95 percent of local departments of social services assist families in finding informal kinship placements; 88 percent of local departments of social services provide services after the child is placed by their family; 30 percent provide services for 3 to 4 months; and, 41 percent provide services for 5 to 6 months.³¹ Since most of the local departments of social services assist with informal kinship care and many families do not wish to pursue formal kinship care, the rate of use for formal kinship care remains low. In 2014, the percentage of foster care children in a formal kinship care arrangement was at 5 percent, down slightly from 5.79 percent in 2013.³²

²⁷ Kebede, Laura. Richmond Times-Dispatch. (2015) *Children's Home Society temporary infant care provides rare opportunity for parents*. Retrieved from: http://www.richmond.com/news/local/city-of-richmond/article_d8c2adee-d232-53ab-b04b-c312e25549cf.html.

²⁸ 22 VAC 40-141-87.

²⁹ 22 VAC 40-141-180 (f-i).

³⁰ Virginia Department of Social Services. *Kinship Care: About Kinship Care*. Retrieved from: <http://www.dss.virginia.gov/family/fc/>.

³¹ Virginia Department of Social Services. (2012). *Child and Family Services Manual: Early Prevention Services to At Risk Families*. Retrieved from: http://www.dss.virginia.gov/files/division/dfs/ca_fc_prevention/early_prevention/manual/SECTION_4_FINAL_Services_to_At_Risk_Families_9-24-12_pdf.pdf.

³² Virginia Department of Social Services. (2014). *Virginia's Annual Report on the Five Year Child Welfare Plan*. Retrieved from: http://www.dss.virginia.gov/files/about/reports/children/annual_progress_services/2014.pdf.

Another important distinction between formal and informal kinship care is that under formal kinship care either a local department of social services has legal custody or the court transfers custody of the child to the relative. Under informal kinship, the only legal process available to the relatives to gain legal authority over the child is to pursue a custody order through the court system. One area of informal kinship care that Virginia lawmakers have addressed is that of access to education. Section 22.1-3(4) of the *Code of Virginia* currently acknowledges the right of an adult relative who provides informal kinship care to access free public education for the child, where the adult resides, by utilizing an affidavit or power of attorney. This change in the law was recently enacted in 2013.³³

In 2011, a qualitative research study on kinship diversion was conducted in Virginia with funding from the Annie E. Casey Foundation. This study highlighted the fact that large differences exist from locality to locality as to how they address kinship diversion and that there exists a lack of resources in some locations. For example, the use of a background check or the time when one is conducted varies across the local social services boards, and assessments of the homes are also done on an ad hoc basis. In order to address a number of these concerns regarding kinship care, in 2014, legislation was introduced by Senator Janet Howell and approved by the General Assembly and Governor directing the Virginia Department of Social Services to review current policies and propose regulations governing kinship care placements. The bill, SB284, directs the Department of Social Services to report its recommendations and findings to the Governor, the General Assembly, and the Board of Social Services by January 1, 2016.³⁴

Another effort to address some of the gaps in kinship care was launched by the Virginia Department of Social Services. The Department of Social Services recently created a Kinship Family Assessment Guide; however, it has yet to be formally adopted. The Department of Social Services conducted a brief pilot program of the guide that included the participation of eight local departments of social services. The goal of the pilot experiment was to test the overall utility of the program and to solicit feedback from the various local boards about areas that need to be collapsed or condensed. Currently, the assessment guide includes nine major categories of assessment questions that include motivation, household configuration, caregivers (primary and secondary), the relative caregiver's relationship with the birth parent(s) (maintaining connections while protecting), family legacies, the relative's resources and ability to access community resources, the child or siblings readiness for placement (short or long term), permanency planning, and loyalties and guilt.³⁵

D. VIRGINIA UTILIZES A SYSTEM OF LICENSING TO PROTECT THE HEALTH AND SAFETY OF CHILDREN.

Virginia law requires licensing of child welfare agencies as well as independent foster homes in accordance with § 63.2-1701 of the *Code of Virginia*. The Virginia Department of Social Services promulgates licensing standards for independent foster homes as well as well as child-placing agencies, 22 VAC 40-141 and 22 VAC 40-131 respectively. Organizations that perform child-placing activities are subject to licensure as a child-placing agency. According to 22 VAC 40-131-10, "child-placing activities" are defined as "the activities involved in the placement of children in foster or adoptive family homes; and children or youth in children's

³³ Va. Code. § 22.1-3 (Effective until June 30, 2016).

³⁴ SB 284 Kinship care; DSS shall review current policy governing placement of children to avoid foster care. Retrieved from: <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=141&typ=bil&val=sb284>.

³⁵ Virginia Department of Social Services. VDSS Kinship Family Assessment Guide.

residential facilities or independent living arrangements. The following activities and actions are integral components of a Virginia-licensed child-placing program.”³⁶

- 1.) The provision of counseling to biological parents including assisting parents to formulate a plan for the care and/or placement of their child;
- 2.) The acceptance of a child's custody for placement purposes;
- 3.) Assessing a child's service and placement needs;
- 4.) Performing home studies;
- 5.) Selecting and approving applicants for resource, foster, treatment foster, or short-term foster care and adoption placements; and approving independent living placements and services;
- 6.) Matching a child with an approved family or licensed children's residential facility;
- 7.) Making a placement of a child in a resource, foster, treatment foster, or short-term foster care home; an independent living arrangement; or children's residential facility selected for that child;
- 8.) Casework and supervision of children in foster care, adoption and independent living, including counseling the child, the biological, adoptive parents, or other persons; and consultation with foster parents and agencies holding custody of the child; and
- 9.) Providing documentation to finalize adoptions and providing post-placement adoption and supervision services or making referrals to appropriate resources for such services.

A child services organization does not need to perform all of the activities listed above in order to be required to submit to licensure as a child-placing agency.

Independent foster homes are also required to be licensed and are defined as, “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.”³⁷ The one exception to this requirement of independent foster home licensure is “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.”³⁸ This exception applies to pre-existing relationships at the time the child needs placement. The standards for licensed child-placing agencies and independent foster homes will be outlined in the following sections.

Licensed Child-Placing Agency: Under the standards for licensed child-placing agencies in Virginia, organizations seeking to place children are required to comply with a number of safety standards including background check requirements.³⁹ In addition, a child-placing agency must develop and implement policies that deal with the safety of children, such as investigating and responding to allegations of child abuse and neglect, and the use of physical restraint and acceptable methods of behavior support.⁴⁰ The licensee is also required to conduct a home study in accordance with Department of Social Services policy.⁴¹ In addition, pre-service training must be provided for all providers, and as a condition of initial approval and renewals of approvals, the licensee shall require each home provider to complete all required training.⁴²

³⁶ 22 VAC 40-131-10.

³⁷ 22 VAC 40-141-10.

³⁸ Ibid.

³⁹ Virginia Department of Social Services. (2014). *Background Checks for Child Welfare Agencies*. Retrieved from: http://www.dss.virginia.gov/files/division/licensing/cdc/intro_page/background_investigations/guidance_procedures/background_checks_for_child_welfare_agencies.pdf.

⁴⁰ 22 VAC 40-131-90.

⁴¹ 22 VAC 40-131-180.

⁴² 22 VAC 40-131-210.

However, Virginia Administrative Code does not specify the number of hours that is necessary for a provider to become qualified. Training shall be relevant to the needs of children and families. Staff for a licensed child-placing agency must also undergo training. Any staff person who works with children must submit to training within 30 days of employment. Also, a staff person must complete the child-placing agency's pre-service training for adoptive and foster parents within one year of employment.

Licensed Independent Foster Home: Licensed independent foster homes comply with many of the same safety standards as licensed child-placing agencies. The same background check applies to both homes and agencies. The components of a background check include:⁴³

- A criminal history record check conducted by the Virginia State Police through the Central Criminal Records Exchange;
- A search of Virginia's Child Protective Services central registry; and
- A sworn disclosure statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges.

Additionally, the Virginia Administrative Code outlines training requirements for licensed independent foster homes. Section 22 VAC 40-141-70 requires that a provider complete a foster parent orientation and training session within the first six months of initial licensure. Providers, assistants, and any adult expected to be alone with the child shall receive, prior to licensure or employment, certification in first aid from an approved source and maintain certification. Furthermore, the provider must obtain 20 hours of related training each year as well as maintain records.⁴⁴

While licensing regulations are determined at the state level, the federal government recently passed the *Fostering Connections to Success and Increasing Adoptions Act of 2008* which gave direction to the states on granting licensing variances for relative foster homes. The goal of the Act is to support relative caregivers and improve outcomes for children in foster care.⁴⁵ In 2011, the Children's Bureau Administration on Children of the U.S. Department of Health and Human Services completed a study on the implementation of this Act they noted that the majority of waivers allowed by states pertained to a child's sleeping arrangements or the space requirements in the house.⁴⁶ In 2012, Senate Bill 299 was passed by the Virginia General Assembly to amend § 63.2-900.1 of the *Code of Virginia* to allow the Commissioner of the Virginia Department of Social Services to grant non-safety variances on a case-by-case basis. Additionally, the Virginia Department of Social Services has identified a small living space as an example of a permanent non-safety related variance.⁴⁷ Virginia allows variances, however, they do not play a huge role in the overall licensing picture since only a small number of relative caregivers pursue licensure.⁴⁸ In the most recent progress report on *Virginia's Five Year State Plan for Child and Family Services*, the Department of Social Services reported that 102

⁴³ 22 VAC 40-141-40.

⁴⁴ 22 VAC 40-141-70.

⁴⁵ U.S. Department of Health and Human Services. (2011). *Report to Congress on States' Use of Waivers of Non-Safety Licensing Standards for Relative Foster Family Homes*. Retrieved from: http://www.acf.hhs.gov/sites/default/files/cb/report_congress_statesuse.pdf.

⁴⁶ Ibid.

⁴⁷ Virginia Department of Social Services. (2013). *Local Department Resource, Foster and Adoptive Family Home Approval Guide*. Retrieved from: https://www.dss.virginia.gov/files/division/dfs/fc/intro_page/guidance_manuals/other/guidance_2_13.pdf.

⁴⁸ U.S. Government Accountability Office. (2014) *Foster Care: HHS Needs to Improve Oversight of Foster Connections Act Implementation*. Retrieved from: <http://www.gao.gov/assets/670/663655.pdf>.

variances for relative foster families have been approved this year.⁴⁹

Overall, Virginia licensing regulations for child-placing agencies and independent foster homes aim to address many of the same concerns in protecting children, and in many ways, they mimic each other. The granting of variances by the Virginia Department of Social Services is rare and is limited to relative foster families by state and federal law.⁵⁰ Finally, informal kinship care arrangements, that were discussed earlier, are not subject to licensure and often are out of the view of the local departments of social services. Local departments of social services' practices for informal kinship care arrangements vary across the Commonwealth.

E. OTHER STATES' INITIATIVES FOR TEMPORARY PLACEMENTS OF CHILDREN.

A number of states have additional options for parents in a crisis, who may not have relatives nearby, to temporarily place their children.

Laws that allow the temporary placements of children vary and take different forms. A small number of the laws are explicitly written to permit a licensing exemption for organizations that facilitate foster care diversion. Another common approach, that many states have adopted, is the Uniform Guardianship and Protective Proceedings Act, which provides that a parent may delegate to another person any power regarding care, custody or property of a minor.

One model that is being utilized in a number of other states is the "Safe Families" approach. The Safe Families model was founded in Chicago in 2003. Parents voluntarily place their children with screened and approved host families, for an average stay of six weeks (44 days), while other families wrap around and support the parent to help them get back on their feet.⁵¹ Host families are not compensated; however, they are supported by other community members who provide clothes, furniture, or respite. In 2014 there were 4,762 placements nationwide using Safe Families, growing from just 210 in 2007.⁵² The Safe Families program operates in over 27 different states.⁵³ A few states have passed laws to enable the Safe Families program to operate with guidelines from their respective state department of social services. Other states including Illinois, where Safe Families was founded, permit the operation of the program under the law but have not passed measures that help facilitate the model.

Three states, Oregon, Oklahoma, and Wisconsin, have laws that create a licensing exemption for private, nonprofit organizations, such as Safe Families for Children. Under the various laws in these states neither the parent nor the organization facilitating delegation of parental powers is required to be licensed. For example, in Wisconsin, the law passed in 2011 exempts a person to whom care and custody of a child is delegated from the requirement that the person obtain a license to operate a foster home. In addition, Wisconsin does not require the organization facilitating delegation of parental powers to be licensed, but rather authorizes the Wisconsin Department of Children and Families to promulgate rules regarding monitoring,

⁴⁹ Virginia Department of Social Services. (2015). *Virginia's Five Year State Plan for Child and Family Services: Annual Progress and Services Report*. Retrieved from: http://www.dss.virginia.gov/files/about/reports/children/annual_progress_services/APSR_2015.pdf.

⁵⁰ Ibid.

⁵¹ Safe Families. *Frequently Asked Questions*. Retrieved from: <http://safe-families.org/about/faq/>.

⁵² The Foundation for Government Accountability. Retrieved from: [http://solutions.thefga.org/download/solutions/safe-families/Safe%20Families%20Overview%20\(1\).pdf](http://solutions.thefga.org/download/solutions/safe-families/Safe%20Families%20Overview%20(1).pdf).

⁵³ Safe Families. (2015). *Presentation to the Commission on Youth*. Retrieved from: <http://vcoy.virginia.gov/SFFC%20presentation%20Vcoy%20final%20new-1.pdf>.

training, and screening and assessment.⁵⁴ Table 4 provides the various types of licensing exemption bill language for states that have approved Safe Families legislation.

Table 4

Licensing Exemption Language for States with Safe Families Laws

Oklahoma – HB2536	Oregon – SB991	Wisconsin – AB30
<p>“The attorney-in-fact...shall not be subject to the requirements of the Oklahoma Child Care Facilities Licensing Act.” The statute also adds, “under a delegation of powers...the parties shall not be subject to any of the requirements or licensing regulations for foster care.”⁵⁵</p>	<p>Licensing requirements do not apply to: “Any private agency or organization facilitating the provision of respite services for parents pursuant to a properly executed power of attorney, “ or “any individual or home of an individual providing respite services for parents pursuant to a properly executed power of attorney.”⁵⁶</p>	<p>“A relative, a guardian of a child, or a person delegated care and custody of a child under [delegation of power by parent] who provides care and maintenance for the child is not required to obtain the license specified in this section.” An entity is defined as “an organization that facilitates delegations of the care and custody of children under [delegation of power by parent].”⁵⁷</p>

Eight other states including Arizona, Georgia, Illinois, Kansas, Maine, Missouri, Montana, and Texas have considered Safe Families legislation. However, none of these states have passed any of the Safe Families related laws that their respective legislatures considered. Many of these states did not act on the legislation because Safe Families was already permitted to operate in the state and the bill being proposed was deemed to be unnecessary. In Arizona, for example, parents can already delegate parental authority for up to six months. The Arizona Senate Health and Human Services committee that reviewed the bill heard testimony from Senators who thought that there was no reason to extend or change the length of time.⁵⁸

Additionally, the issue of the use of a licensing exemption was specifically addressed in Montana when that state’s Senate Committee of Public Health, Welfare, and Safety reviewed a Safe Families bill proposal. A representative from Montana’s Department of Public Health and Human Services addressed concerns about a licensing exemption by stating that the section in the bill requesting exemption from licensure was added to the legislative proposal to make it clear that the state of Montana is not making referrals to Safe Families in order to avoid pursuing abuse or neglect charges and that parents who use Safe Families are making the placing decision on their own and not under the pressure of a state welfare agency. A representative from the Foundation of Governmental Accountability further explained that the

⁵⁴ Wisconsin Legislative Council Act Memo. 2011 Wisconsin Act 87. Retrieved from: <https://docs.legis.wisconsin.gov/2011/related/lcactmemo/act087.pdf>.

⁵⁵ Oklahoma Enrolled House Bill No. 2536. (2014). Retrieved from: <http://www.sos.ok.gov/documents/legislation/54th/2014/2R/HB/2536.pdf>.

⁵⁶ Oregon Enrolled Senate Bill 991. (2010). Retrieved from: <https://olis.leg.state.or.us/liz/2010S1/Downloads/MeasureDocument/SB991/Enrolled>.

⁵⁷ Wisconsin Act 87. (2011). Retrieved from: <http://docs.legis.wisconsin.gov/2011/related/acts/87>.

⁵⁸ Arizona State Senate Committee on Health and Human Services. (2015). Retrieved from: http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=15167.

overall structure of the bill would give confidence to the placing parent regarding their decision.⁵⁹ Similarly to Arizona, the Safe Families legislation in Montana did not pass. Montana is a state where parents can already delegate parental authority using a power of attorney for a period of up to six months.

A number of other states follow a model for the temporary placements of children based on the Uniform Guardianship and Protective Proceedings Act of 1982, which states, “A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding [six] months, any power regarding care, custody, or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward.”⁶⁰ The wording above was tweaked when the National Conference of Commissioners on Uniform State Laws adopted the Uniform Guardianship and Protective Proceedings Act (1997). These changes, however, were not substantive. The comment issued by the National Conference of Commissioners on Uniform State Laws seeks to highlight the fact that this section does not create a guardianship. The comment also noted that “this section could be useful, for example, in other types of situations when a parent or guardian becomes ill or has to be away from home for less than six months.”⁶¹

When looking at the laws of the states that use the Safe Families model and those similar to the Uniform Guardianship and Protective Proceedings Act model, ten states limit the delegation of parental authority to one year and 13 states limit this authority to six months. The remaining states laws limit the temporary delegation of parental authority solely to grandparents or they have no time frame for expiration of the power of attorney. In addition, some states have reported that they do not have a mechanism to track expired power of attorney documents.⁶² Table 5 displays the time limits prescribed for the use of a power of attorney to temporarily delegate parental authority in other states.

Table 5

Temporary Placements of Children Laws in Other States

State	Statute/Code Section	Time limit
Alabama	Ala. Code § 26-2A 7	1 year
Alaska	Alaska Stat. § 13.26.020	
Colorado	Colo. Rev. Stat. Ann. § 15-14-105	
Hawaii	Haw. Rev. Stat. § 560:5-105	
Illinois	Ill. Comp. Stat. tit. 755 § 5/11-5.4	
Louisiana ‡	La. Rev. Stat. § 9:951	
Minnesota	Minn. Stat. Ann. § 524.5-211	
Missouri	Mo. Ann. Stat. § 475.024	
Oklahoma	Ok Stat 10 § 10-700	
Wisconsin	Wi. Stat. § 48.979	

⁵⁹ Montana Senate Public Health, Welfare, and Safety Committee. (2015). Retrieved from: <http://leg.mt.gov/css/Video-and-Audio/avsearch.asp?vbill=SB186&vSDt=09/19/2014&vEDt=02/27/2015>.

⁶⁰ Uniform Laws Annotated Volume 8A. (2015). *Estate, Probate and Related Laws*.

⁶¹ Ibid.

⁶² U.S. Government Accountability Office. (2015). *Child Welfare: Steps Have Been Taken To Address Unregulated Custody Transfers Of Adopted Children*. Retrieved from: <http://www.gao.gov/assets/680/672575.pdf>.

Arizona	Ariz. Rev. Stat. Ann. § 14-5104	6 months
Idaho	Idaho Code Ann. § 15-5-104	
Maine	Me. Rev. Stat. Ann. tit. 18-A § 5-104	
Michigan	Mich. Comp. Laws Ann. § 700.5103	
Montana	Mont. Code Ann. § 72-5-103	
Nebraska	Neb. Rev. Stat. § 30-2604	
Nevada	Nev. Rev. Stat. § 159.205	
New Jersey	N.J. Stat. Ann. § 3B:12-39	
New Mexico	N.M. Stat. Ann. § 45-5-104	
New York	N.Y. [Gen. Oblig.] Law § 5-1551	
North Dakota	N.D. Cent. Code § 30.1-26-04	
Oregon	Or. Rev. Stat. § 109.056	
Utah	Utah Code Ann. § 75-5-103	
District of Columbia	D.C. Code § 21-2301	
Georgia *	Ga. Code Ann. § 19-9-122	No time limit
Ohio *	Ohio Rev. Code Ann. § 3109.52	
Tennessee	Tenn. Code Ann. § 34-6-302	
Texas †	Tx. Family Code § 34.001	

‡ Louisiana utilizes a form called a provisional custody by mandate. It is similar to a power of attorney.

* Laws in Georgia and Ohio provide solely for a grandparent power of attorney.

† Texas law allows a parent to execute a form known as an Authorization Agreement for Nonparent Relative or Voluntary Caregiver with a grandparent, sibling, aunt, uncle or Parental Child Safety Placement Voluntary Caregiver in accordance with Child Protective Services.

VIII. Findings and Recommendations

After presentations of the findings and recommendations at the Commission's September 8 and October 20, 2015 meetings, and receipt of public comment, the Commission on Youth approved the following recommendation:

Findings

Prevention Services:

Prevention Services are meant to strengthen families and prevent child maltreatment. The Virginia Department of Social Services uses a practice model, which promotes safe, stable, and healthy families. In Virginia, prevention services have transformed and grown over the past several years starting with the Children's Services System Transformation implemented in 2007. While the implementation of recent improvements have resulted in a decrease in the number of children in Virginia's foster care system and an increase in the use of kinship care, lack of funding and staffing is still a concern. According to the latest Children's Services Act (CSA) Critical Services Gap presentation for fiscal year 2013, listed among the top five of statewide service gaps are parenting/family skills training and regular foster care/family care. As well, the top barriers highlighted to community service availability remain a need for a greater buy-in and support from the line staff and a need for greater collaboration among community stakeholders.

Use of family-driven services continues to be promoted in Virginia as a best practice model. Since early prevention services are mostly voluntary they require that the family unit act as

the primary decision maker, making it even more important that the services provided are family focused. As well as embracing family driven services, the Department of Social Services stresses an entrepreneurial approach to program development and service delivery. This means thinking “out of the box” to provide services to assist families whose children are safe, but the family unit is struggling as a whole.

Diversion:

In addition to its prevention efforts, over the past decade Virginia has paved the way to increase diversion efforts. In 2010, Delegate Peace introduced a § 1 bill (HB 718) , which became law, requesting that the Governor and the Virginia Department of Social Services work together to reduce the number of children in foster care by 25 percent within 10 years. Five years into this effort, there has been a 17.86% decrease as of July 1, 2015. Virginia also supported the effort of improving outcomes to its current diversion program by partnering with the Annie E. Casey Foundation in 2011 for a qualitative study on kinship care. Specific recommendations included: develop and adopt clear state-level policy guidelines and provide caseworkers with training and tools for clients in order to inform and advise families on available benefits and options. Most recently in 2014, Senator Howell introduced a § 1 bill (SB 284), which became law, directing that the Department of Social Services review current policies governing kinship care placements. The legislation also directed the Department of Social Services to develop recommendations for regulations.

Delegation of Parental Authority:

Approximately half of states have some form of a temporary delegation of authority by power of attorney law. Ten states limit this authority to one year and 13 states limit this authority to six months. The remaining states laws limit the temporary delegation of authority solely to grandparents or they have no time frame for expiration of the power of attorney. The most common model followed is based on the Uniform Guardianship and Protective Proceedings Act of 1982, which states, “A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding [six] months, any power regarding care, custody, or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward.” States that utilize this process make their agreement on a power of attorney form instead of going to court. In addition, the power of attorney device does not act to confer custody on the caregiver, but rather allow the designated caretaker to enroll the child in school or obtain medical care. In Virginia, kinship caregivers are permitted to use an affidavit and power of attorney to enroll a child in school.

Recommendation 1

Request a budget amendment in the 2016 budget (caboose) and 2016 – 2018 biennial budget for the Department of Social Services to partner with Patrick Henry Family Services to implement a pilot program in the area encompassing Planning District 11 (Amherst, Appomattox, Bedford, Campbell Counties and the City of Lynchburg) for the temporary placements of children for children and families in crisis.

This pilot program would allow a parent or legal custodian of a minor, with the assistance of Patrick Henry Family Services, to delegate to another person by a properly executed power of attorney any powers regarding care, custody, or property of the minor for temporary placement for a period that is not greater than 90 days. This program would allow for an option of a one-time 90 day extension. Prior to the expiration of the 180 day period, if the child is unable to return to his home, then Patrick Henry Family

Services shall contact the local department of social services and request an assessment of the child and an evaluation of services needed and to determine if a petition to assess the care and custody of the child should be filed in the local juvenile and domestic relations court.

The Department of Social Services shall ensure that this pilot program meets the following specific programmatic and safety requirements outlined in 22 VAC 40-131 and 22 VAC 40-191.

- The pilot program organization shall meet the background check requirements described in 22 VAC 40-191.
- The pilot program organization shall provide pre-service and ongoing training for temporary placement providers and staff (22 VAC 40-131-210 and 22 VAC 40-131-150).
- The pilot program organization shall develop and implement written policies and procedures for governing active and closed cases, admissions, monitoring the administration of medications, prohibiting corporal punishment, ensuring that children are not subjected to abuse or neglect, investigating allegations of misconduct toward children, implementing the child's back-up emergency care plan, assigning designated casework staff, management of all records, discharge policies, and the use of seclusion and restraint (22 VAC 40-131-90).

The Department of Social Services shall evaluate the pilot program and determine if this model of prevention is effective. A report of the evaluation findings and recommendations shall be submitted to the Governor and Chairs of the House Appropriations and Senate Finance Committees as well as the Commission on Youth by December 1, 2017.

VIII. Acknowledgments

The Virginia Commission on Youth extends special appreciation to the members of the Work Group and to the following for their assistance on this study:

Laura Ash-Brackley and Nadine Marsh Carter
Children's Home Society

Alexandra James
Trinity Family Life Center

Virginia Department of Social Services

HOUSE BILL NO. 2034

Offered January 14, 2015

Prefiled January 14, 2015

A BILL to amend and reenact §§ 63.2-100 and 63.2-1715 of the Code of Virginia and to amend the Code of Virginia by adding in Title 20 a chapter numbered 10, consisting of sections numbered 20-166 and 20-167, relating to delegation of parental or legal custodial powers; child-placing agency.

Patrons-- Byron, Bell, Richard P., Cline, Cox, Fariss, Garrett, O'Bannon and Wilt

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-100 and 63.2-1715 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 20 a chapter numbered 10, consisting of sections numbered 20-166 and 20-167, as follows:

CHAPTER 10.

POWER OF ATTORNEY TO DELEGATE PARENTAL OR LEGAL CUSTODIAL POWERS.

§ 20-166. *Power of attorney to delegate parental or legal custodial powers.*

A. A parent or legal custodian of a child, by a properly executed power of attorney pursuant to § 20-167, may delegate to another person, for a period not to exceed one year, any of the powers regarding the custody, care, and property of the child except the power to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child. A delegation of powers under this section shall not operate to change or modify any parental or legal rights, obligations, or authority established by an existing court order, or deprive a parent or legal custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of any child under this Title.

B. The parent or legal custodian of the child shall have the authority to revoke or withdraw the power of attorney authorized by subsection A at any time. If the delegation of authority lasts longer than one year, the parent or legal custodian of the child shall execute a new power of attorney for each additional year that the delegation exists.

C. The attorney-in-fact shall exercise parental or legal authority on a continuous basis for not less than 24 hours and without compensation for the intended duration of the power of attorney authorized by subsection A and shall not be subject to the licensing requirements of § 63.2-1701.

D. The execution of a power of attorney by a parent or legal custodian authorized by subsection A shall not constitute abandonment, abuse, or neglect as defined in § 63.2-100 unless the parent or legal custodian fails to make contact or execute a new power of attorney after the one-year time limit has elapsed.

E. Under a delegation of powers as authorized by subsection A, the child subject to the power of attorney shall not be deemed placed in foster care, in a foster home, or in an independent foster home as defined in § 63.2-100, and the parties shall not be subject to any of the licensing requirements or regulations for foster care.

§ 20-167. Statutory form for power of attorney to delegate parental or legal custodial powers.

A. A power of attorney to delegate parental or legal authority executed pursuant to this chapter shall be substantially as follows:

POWER OF ATTORNEY TO DELEGATE PARENTAL OR LEGAL CUSTODIAL POWERS

1. I certify that I am the parent or legal custodian of:

_____	_____
(Full name of minor child)	(Date of birth)
_____	_____
(Full name of minor child)	(Date of birth)
_____	_____
(Full name of minor child)	(Date of birth)

2. I designate _____ (insert full name, address, and phone number of designated attorney-in-fact) as the attorney-in-fact of each child listed above.

3. I delegate to the attorney-in-fact all of my power and authority regarding the care, custody, and property of each minor child named above, including the right to enroll the child in school, the right to inspect and obtain copies of education records and other records concerning the child, the right to attend school activities and other functions concerning the child, and the right to give or withhold any consent or waiver with respect to school activities, medical and dental treatment, and any other activity, function, or treatment that may concern the child. This delegation shall not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child.

OR

3. I delegate to the attorney-in-fact the following specific powers and responsibilities:

_____.

This delegation shall not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child.

4. This power of attorney is effective for a period not to exceed one year, beginning _____ (insert date) and ending _____ (insert date). I reserve the right to revoke this authority at any time.

(Signature of parent/legal custodian) _____ (Date) _____

5. I hereby accept my designation as attorney-in-fact for the minor child/children specified in this power of attorney.

(Signature of attorney-in-fact) _____ (Date) _____

B. A power of attorney executed under this chapter is legally sufficient if the wording of the form complies substantially with subsection A, the form is properly completed, and the signatures of the parties are acknowledged or verified before a notary public.

§ 63.2-100. 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;
5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis; or
6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in **§ 55-79.2**, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to **§ 9.1-902**.

If a civil proceeding under this title is based solely on the parent having left the child at a hospital or rescue squad, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour

emergency services or to an attended rescue squad that employs emergency medical technicians, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § **16.1-283** and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

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

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

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult.

"Adult day care center" means any facility that is either operated for profit or that desires licensure and that provides supplementary care and protection during only a part of the day to four or more aged, infirm or disabled adults who reside elsewhere, 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, and (ii) the home or residence of an individual who cares for only persons related to him by blood or marriage. Included in this definition are any two or more places, establishments or institutions owned, operated or controlled by a single entity and providing such supplementary care and protection to a combined total of four or more aged, infirm or disabled adults.

"Adult exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage.

"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 neglect" means that an adult 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 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 under 18 years of age.

"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 any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to § **63.2-1819** or a local board that places children in foster homes or adoptive homes pursuant to §§ **63.2-900**, **63.2-903**, and **63.2-1221**, *other than a private, nonprofit organization that does not accept public funds and 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, including assistance with identifying appropriate placements for their children, or that provides services and resources to support children, parents and legal guardians, and persons to whom parental or legal custodial powers are delegated pursuant to Chapter 10 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 day center, child-placing agency, children's residential facility, family day home, family day system, 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 day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving six through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.

"Family day system" means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical

assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"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 the place of residence of any natural person 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 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 and 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 ~~and~~; (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 between the ages of 18 and 21 in transitioning to self-sufficiency.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he 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 or (ii) is at least 18 years of age but who has not yet reached 21 years of age and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local board of social services. 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.

"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.

"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.

"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**.

"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 the Virginia Initiative for Employment Not Welfare (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.

§ **63.2-1715**. Exemptions from licensure.

A. The following child day programs shall not be required to be licensed:

1. A child day center that has obtained an exemption pursuant to § **63.2-1716**.
2. A program where, by written policy given to and signed by a parent or guardian, school-aged children are free to enter and leave the premises without permission or supervision, regardless of (i) such program's location or the number of days per week of its operation; (ii) the provision of transportation services, including drop-off and pick-up times; or (iii) the scheduling of breaks for snacks, homework, or other activities. A program that would qualify for this exemption except that it assumes responsibility for the supervision, protection and well-being of several children with disabilities who are mainstreamed shall not be subject to licensure.
3. A program of instructional experience in a single focus, such as, but not limited to, computer science, archaeology, sport clinics, or music, if children under the age of six do not attend at all and if no child is allowed to attend for more than 25 days in any three-month period commencing with enrollment. This exemption does not apply if children merely change their enrollment to a different focus area at a site offering a variety of activities and such children's attendance exceeds 25 days in a three-month period.
4. Programs of instructional or recreational activities wherein no child under age six attends for more than six hours weekly with no class or activity period to exceed one and one-half hours, and no child six years of age or above attends for more than six hours weekly when school is in session or 12 hours weekly when school is not in session. Competition, performances and exhibitions related to the instructional or recreational activity shall be excluded when determining the hours of program operation.
5. A program that operates no more than a total of 20 program days in the course of a calendar year provided that programs serving children under age six operate no more than two consecutive weeks without a break of at least a week.

6. Instructional programs offered by public and private schools that satisfy compulsory attendance laws or the Individuals with Disabilities Education Act, as amended, and programs of school-sponsored extracurricular activities that are focused on single interests such as, but not limited to, music, sports, drama, civic service, or foreign language.

7. Education and care programs provided by public schools that are not exempt pursuant to subdivision A 6 shall be regulated by the State Board of Education using regulations that incorporate, but may exceed, the regulations for child day centers licensed by the Commissioner.

8. Early intervention programs for children eligible under Part C of the Individuals with Disabilities Education Act, as amended, wherein no child attends for more than a total of six hours per week.

9. Practice or competition in organized competitive sports leagues.

10. Programs of religious instruction, such as Sunday schools, vacation Bible schools, and Bar Mitzvah or Bat Mitzvah classes, and child-minding services provided to allow parents or guardians who are on site to attend religious worship or instructional services.

11. Child-minding services that are not available for more than three hours per day for any individual child offered on site in commercial or recreational establishments if the parent or guardian (i) is not an on-duty employee, except for part-time employees working less than two hours per day, (ii) can be contacted and can resume responsibility for the child's supervision within 30 minutes, and (iii) is receiving or providing services or participating in activities offered by the establishment.

12. A certified preschool or nursery school program operated by a private school that is accredited by a statewide accrediting organization recognized by the State Board of Education or accredited by the National Association for the Education of Young Children's National Academy of Early Childhood Programs; the Association of Christian Schools International; the American Association of Christian Schools; the National Early Childhood Program Accreditation; the National Accreditation Council for Early Childhood Professional Personnel and Programs; the International Academy for Private Education; the American Montessori Society; the International Accreditation and Certification of Childhood Educators, Programs, and Trainers; or the National Accreditation Commission that complies with the provisions of § 63.2-1717.

13. A program of recreational activities offered by local governments, staffed by local government employees, and attended by school-age children. Such programs shall be subject to safety and supervisory standards established by local governments.

14. A program of instructional or athletic experience operated during the summer months by, and as an extension of, an accredited private elementary, middle, or high school program as set forth in § 22.1-19 and administered by the Virginia Council for Private Education.

B. Family day homes that are members of a licensed family day system shall not be required to obtain a license from the Commissioner.

C. No private nonprofit organization that does not accept public funds and that assists parents with the process of delegating parental or custodial powers of their children pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20, including assistance with identifying appropriate placements for their children, or provides services and resources to

support children, parents and legal guardians, and persons to whom parental or legal custodial power are delegated pursuant to Chapter 10 of Title 20 shall be required to obtain a license as a child-placing agency from the Commissioner. No person to whom parental and legal custodial powers has been delegated pursuant to Chapter 10 of Title 20 shall be required to obtain a license to operate an independent foster home or approval as a foster parent from the Commissioner.

D. Officers, employees, or agents of the Commonwealth, or of any county, city, or town 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.