

# Maryland Register

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## Title 07 DEPARTMENT OF HUMAN RESOURCES Subtitle 02 SOCIAL SERVICES ADMINISTRATION

### 07.02.11 Out-of-Home Placement Program

Authority: Family Law Article, §§5-501, [5-504,] 5-524—5-525, 5-527—5-529, 5-531—5-532, and 5-534; [5-701, and 5-709] Courts and Judicial Proceedings Article, §§3-801[, ]—3-802, [3-815, 3-816.1, 3-817,] 3-819.1 [3-819.2, 3-820], and 3-823; [Human Services Article, §9-101 et seq. and] Education Article, §§7-101(b), and 15-106.1; Annotated Code of Maryland  
(Agency Note: Federal Regulatory Reference—[42] 45 CFR §§1355 and 1356)

#### Notice of Proposed Action

[14-022-P]

The Secretary of Human Resources proposes to amend Regulations .03, .06, and .21 under **COMAR 07.02.11 Out-of-Home Placement Program**.

#### Statement of Purpose

The purpose of this action is to clarify who may request a voluntary placement; what conditions must be met in order for the local department of social services to sign a voluntary placement agreement; when a voluntary placement cannot be made; when a voluntary placement may be terminated prior to a court hearing; and when a local department can rescind a voluntary placement. Regulation .06 adds a section on enhanced after care giving guidance to the local departments on how former foster youth over the age of 18 can re-enter foster care and receive transitional youth services. In addition, Regulation .21 adds a section on enhanced after care and describes when the local department would need to petition the court to extend the voluntary placement beyond 180 days. Regulation .03 is amended to include the definition of legal guardian.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to Andrea Shuck, Regulations Coordinator, Department of Human Resources, 311 W. Saratoga Street, Room 265, Baltimore, MD 21201, or call 410-767-2149, or email to [andrea.shuck@maryland.gov](mailto:andrea.shuck@maryland.gov), or fax to 410-333-0637. Comments will be accepted through February 25, 2014. A public hearing has not been scheduled.

#### .03 Definitions.

A. (text unchanged)

B. Terms Defined.

(1)—(29) (text unchanged)

(30) *“Legal guardian” means a person to whom guardianship of a child has been given by order of court, including a court other than the juvenile court.*

[(30)] (31)—[(70)] (71) (text unchanged)

**.06 Voluntary Placement.**

A. Time-Limited Voluntary Placement.

(1)–(2) (text unchanged)

(3) [Restrictions on a Time-Limited Voluntary Placement.] The local department may accept a time-limited voluntary placement only when all of the following conditions are met:

(a)–(f) (text unchanged)

(4) [Notices to Parents or Legal Guardians.] The local department shall:

(a)–(b) (text unchanged)

(5)–(8) (text unchanged)

B. Children with Disabilities Voluntary Placement.

[(1) If a parent or legal guardian is unable to provide for a child who has a developmental disability as defined in COMAR 10.22.01.01B, or a mental illness, and the purpose of the placement is to obtain treatment or care related to the child's disability, the local department may approve a request for a voluntary placement if:

(a) The child has a current documented developmental disability or mental illness for which the parent or legal guardian is unable to provide treatment or care;

(b) The local department has made reasonable efforts to prevent an out-of-home placement;

(c) The local department has obtained approval from the Administration before signing a voluntary placement agreement;

(d) Both parents, the parent with sole legal custody, or the legal guardian has signed a binding written agreement which gives the local department the responsibility for placement and care decisions related to the child;

(e) Any parent who is a party to the voluntary agreement has agreed to pay child support in accordance with Regulation .29 of this chapter;

(f) There are no findings or pending investigations that the parent or legal guardian has maltreated the child; and

(g) The placement is made in support of a plan of service to the parent or legal guardian designed to lead to reunification.]

(1) *The following may request a Voluntary Placement Agreement:*

(a) *A parent;*

(b) *A legal guardian; or*

(c) *The Court.*

(2) *A Voluntary Placement Agreement may not be initiated by a third party.*

(3) *The local department shall make reasonable efforts to prevent placement in accordance with Md. Code Ann., Family Law Article, §5-525(e), Annotated Code of Maryland.*

(4) *The local department shall conduct an assessment.*

(5) *In order for the local department to sign a voluntary placement agreement, the following conditions must be met:*

(a) *The child has a documented developmental disability or mental illness;*

(b) *A treatment provider such as a medical doctor, psychiatrist, or psychologist has provided a written recommendation which details the need for out-of-home placement;*

(c) *The child requires an out-of-home placement in order to obtain treatment directly related to the documented disability;*

(d) *The parent is unable to provide treatment or care;*

(e) *The goal is reunification with the family at conclusion of treatment;*

(f) *Local Care Team (LCT) meeting has been held to determine whether any alternative or interim services for the child and family may be provided by any State agency;*

(g) *An appropriate placement and placement date has been determined as follows:*

(i) *The placement must be in the least restrictive setting; and*

(ii) *A psychiatric hospital is not considered a placement;*

(h) *The Administration must approve the voluntary placement by signing the Children with Disabilities Placement Checklist;*

(i) *The parent and the Child Support Enforcement Agency must finalize a binding child support agreement detailing the amount and manner for child support payments;*

(j) *Both parents, a parent with sole legal custody, or a legal guardian has signed a voluntary placement agreement which gives the local department the responsibility for placement and care decisions related to the child; and*

(k) *The local department shall make reasonable efforts to prevent placement.*

(6) *A voluntary placement cannot be made if the parent refuses to pay child support or enter into a written agreement.*

(7) *A voluntary placement agreement cannot be signed prior to a placement date.*

[(2)] (8) *A child may remain in a Children with Disabilities Voluntary Placement beyond 180 calendar days or after the child's 18<sup>th</sup> birthday if:*

(a) A [health care professional] *treatment provider such as a medical doctor, psychiatrist, or psychologist* has submitted written documentation *supporting the need to continue the voluntary placement* [that treatment and care continues to be needed] due to the child's developmental disability or mental illness; and

(b) Before the 180th calendar day in placement *or prior to a child's 18<sup>th</sup> birthday*, a juvenile court determines that continuation of the voluntary placement agreement is in the child's best interest.

[(3)] (9) A local department may not seek *legal* custody as long as:

(a)–(b) (text unchanged)

(c) There is no [bona fide] allegation of child abuse or neglect *as defined in Courts and Judicial Proceedings Article, §3-801(b),(s) and,(x), Annotated Code of Maryland.*

[(4)] (10) (text unchanged)

[(5)] (11) [Subject to §B(7) of this regulation, a] A children with disabilities voluntary placement agreement may be terminated [before court intervention and the child returned to the parent or parents or legal guardian if the:] *prior to a voluntary placement hearing and the child returned to the parent or parents or legal guardian within 15 calendar days of notice if the local department receives a written revocation from the parent or legal guardian that signed the voluntary placement agreement.*

[(a)] Local department receives a written revocation from the parent or parents or legal guardian that signed the voluntary placement agreement and:

(i) A voluntary placement hearing has not been held; and

(ii) The local department has discussed available placement plans and options with the parent or parents or legal guardian; or

(b) Child is discharged from an out-of-home placement with a recommendation to return home and the parent or parents or legal guardian who signed the agreement are in support of the termination.]

(12) *The local department may rescind the voluntary placement agreement prior to a voluntary placement hearing provided that:*

(a) *The parent or legal guardian who signed the agreement provides the local department with a written revocation of the agreement: or*

(b) *The parent or legal guardian who signed the agreement moves out-of-State: or*

(c) *The parent or legal guardian who signed the agreement fails to fulfill the terms of the agreement including the parent refusing to pay child support in accordance with a child support order: and*

(d) *The local department provides to the parent or legal guardian 15 calendar days written notice which includes details of the reasons for rescission and an explanation of appeal rights and the local department has discussed available placement plans and options with the parent or legal guardian.*

[(6)] (13) A children with disabilities voluntary placement agreement may be terminated after a voluntary placement hearing has been held and the local department:

(a) – (b) (text unchanged)

(c) Has requested that the juvenile proceedings be terminated by sending copies of both the request for revocation and an attached revocation notice to the juvenile court, all counsel, the parent [,and] or legal guardian *informing them that the child is no longer in a voluntary placement, that the local department has closed its out-of-home placement case and is requesting that the juvenile court close its case.*

[(7)] (14) (text unchanged)

[(8)] (15) [Local Department Administrative Responsibilities for Children with Disabilities Voluntary Placement.

(a)] Each local department shall designate a person to administer requests for voluntary placement agreements who shall be:

[(i)] (a) – [(ii)] (b) (text unchanged)

[(b)] Each local department shall report annually to the Administration the:

(i) Number of requests for voluntary placement agreements for children with developmental disabilities or mental illnesses received;

(ii) Outcome of each request received; and

(iii) Reason for each denial of a request.

(c) The local department shall discuss all requests for voluntary placement agreements at the next meeting of the local care team to determine whether any alternative or interim services for the child and family may be provided by any State agency.]

*C. Nothing in the preceding sections shall preclude the local departments from taking appropriate action pertaining to child abuse and neglect as defined in Family Law Article, §5-701, Annotated Code of Maryland.*

*D. Enhanced After Care.*

(1) *The purpose of Enhanced After Care is to provide former Maryland foster youth an opportunity to re-enter foster care through a voluntary placement agreement so that they can continue learning and practicing independent living skills.*

(2) *The goal of Enhanced After Care is to ensure that the participants recognize and accept personal responsibility for making the transition into adulthood.*

- (3) To be eligible for Enhanced After Care, a youth shall be:
- (a) A former Maryland foster care youth;
    - (i) Whose commitment to the local department was rescinded after the age of 18 years; and
    - (ii) Who was not discharged from foster care due to adoption, reunification, guardianship, marriage, or military duty. and
    - (iii) Who enters into an Enhanced After Care Voluntary Placement Agreement with the local department in the jurisdiction from which the youth exited foster care or where they are receiving services.
- (4) To continue to be eligible for Enhanced After Care, within 30 days of signing an Enhanced After Care Voluntary Placement Agreement, a youth shall be:
- (a) Completing secondary education or a program leading to an equivalent;
  - (b) Enrolled in an institution which provides post secondary or vocational training;
  - (c) Participating in a program or activity designed to promote or remove barriers to unemployment;
  - (d) Employed at least 80 hours per month; or
  - (e) Incapable of doing any of the above described activities due to a medical condition.
- (5) Youth who exit out-of-home placement after their 18<sup>th</sup> birthday shall apply for Enhanced After Care services prior to the age of 20 years and 6 months.
- (6) Youth receiving Enhanced After Care may receive all services available to youth under the Out-of-Home Placement Program as set forth in this chapter.
- (7) A youth may remain in an Enhanced After Care Voluntary Placement beyond 180 calendar days if before the 180<sup>th</sup> calendar day in placement, a juvenile court determines that continuation of the voluntary placement agreement is in the youth's best interest.
- (8) The local department shall file a petition with the juvenile court to request an extension of the voluntary placement or to request an emergency voluntary placement review hearing if the local department determines termination of the voluntary placement agreements if appropriate.
- (9) The local department shall terminate services for the following:
- (a) Youth's failure to comply with the service agreement or the voluntary placement agreement;
  - (b) Youth turns 21;
  - (c) Youth marries;
  - (d) Youth enters military duty;
  - (e) Youth dies; or
  - (f) Youth voluntarily terminates the voluntary placement agreement.
- (10) All cases under an Enhanced After Care Voluntary Placement Agreement shall meet all service and case plan requirements for the out-of-home placement program as set forth in this chapter.

**.21 Voluntary Placement [for Children with Disabilities] Hearings.**

*A. Children with Disabilities Voluntary Placements.*

[A.] (1) (text unchanged)

[(1)] (a)—[(2)](b) (text unchanged)

[B.] (2) If a child needs to remain in out-of-home placement over 180 calendar days, the local department that placed a child pursuant to a children with disabilities voluntary placement agreement shall file a petition to request a voluntary placement hearing in a timely manner so as to[:

(1) Obtain] *obtain*, before the 180th calendar day in voluntary placement or *prior to the child's 18th birthday*, a judicial determination that continuation of the voluntary placement is in the best interest of the child [;and].

[(2) Allow the court to obtain jurisdiction over the child before the child's 18th birthday.]

[C.] (3) (text unchanged)

[(1)](a)—[(5)] (e) (text unchanged)

*B. Enhanced After Care.*

(1) *If the local department and youth agree that the voluntary placement shall continue after 180 calendar days from the signing of the voluntary placement agreement, the local department shall file a petition with the juvenile court before the 180<sup>th</sup> day, requesting a review of the voluntary placement.*

(2) *Before the 180<sup>th</sup> calendar day, the local department shall obtain a finding from the court that continuation of the placement is in the best interests of the youth.*

TED DALLAS  
Secretary of Human Resources