



Virginia Department of Planning and Budget **Economic Impact Analysis**

22 VAC 40-201 Permanency Services – Prevention, Foster Care, Adoption, and Independent Living

Department of Social Services

Town Hall Action/Stage: 5318/8992

October 2, 2020; updated October 10, 2020 to reflect new information

Summary of the Proposed Amendments to Regulation

The Board of Social Services (Board) proposes to make a number of changes to the regulation in response to 2019 and 2020 legislation. The proposed amendments would conform the regulation to the Code of Virginia as well as federal regulations. The Board proposes to establish caseload limits, add requirements regarding the termination of parental rights, and require case consultation when reunification remains the goal after 12 months. The proposed amendments would also add specific requirements for reporting by local boards and the identification and notification of relatives. The Board also seeks to update certain provisions of independent living services, and establish a protocol for the Department of Social Services (DSS) to respond to complaints regarding foster care.

Background

The Board seeks to make a number of amendments that would conform the regulation to new legislation pertaining to foster care and permanency that were passed in 2019 and 2020. The legislation and subsequent changes to the regulation, including those proposed here, were at least in part prompted by a 2018 study of Virginia's foster care system undertaken by the Joint

Legislative Audit and Review Commission (JLARC report).¹ The proposed changes are summarized below:

1. Local departments of social services are currently required to identify and notify all adult relatives within 30 days of a child entering foster care. Pursuant to Chapter 446 of the 2019 Acts of Assembly (2019 foster care omnibus), the Board seeks to require the local departments to “search for relatives at the time the child enters foster care, annually, and prior to any subsequent placement changes for the child.”² The Board also seeks to remove the requirement that a home or licensed facility be “approved” so that children may be placed in homes or licensed facilities that meet federal and state requirements even if full foster home approval has not yet been granted.
2. Pursuant to Chapter 934 of the 2020 Acts of Assembly, the Board seeks to modify the requirements and exceptions regarding the termination of parental rights for children who enter foster care.³ 22 VAC 40-201-110 *Court hearings and reviews* currently requires local departments to file a petition to terminate parental rights if a child has been in foster care 15 out of the last 22 months. The Board seeks to amend this section so that local departments would also be required to file a petition to terminate parental rights if the parent has been convicted of the offenses listed in Virginia Code § 63.2-910.2.⁴ The Board also seeks to add the following exceptions, which would need to be documented in the child’s case plan and submitted to court:
 - a. A relative who is caring for the child is also pursuing custody but does not want to adopt.
 - b. The local department has not provided services to the parents deemed necessary for the safe return of the child.

¹ See <http://jlarc.virginia.gov/2018-foster-care.asp>

² See <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=191&typ=bil&val=ch446>. The 2019 foster care omnibus also included other requirements pertaining to the staffing and operations of regional offices, the creation of a dashboard, and DSS takeover of local departments. Not all requirements are being implemented through this action: some of these requirements have been implemented through other regulatory change actions, while other requirements have been implemented directly, without any changes to the regulation.

³ See <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=ch934>.

⁴ See <https://law.lis.virginia.gov/vacode/title63.2/chapter9/section63.2-910.2/>.

- c. The local department has documented a compelling reason why termination of parental rights is not in the best interest of the child.⁵

Local departments that do not file petitions to terminate parental rights in accordance with the above would be required to report to the commissioner or designee a “clear description of the reason why the petition has not been filed and the reasonable efforts made” toward reunification or placement with a relative. The Board also seeks to require the commissioner or designee to compile this information (without any identifying details) into an annual report to be shared with all local departments, and to use this information to “establish a training program that educates local departments regarding common errors made by local departments when declining to file a petition for termination of parental rights.” In keeping with this change, the Board also seeks to amend 22 VAC 40-201-70 *Foster care goals* to add that “when a child has been in care for 12 months and reunification continues to be the goal, the local department shall consult with the commissioner or designee regarding case planning.”

3. The Board seeks to make a number of changes to 22 VAC 40-201-100 *Providing independent living services: service for youth 14 years of age and older*:
 - a. Add “parent or custodian” to the list of individuals who are involved in identifying necessary independent living services.
 - b. Specify that the independent living services provisions apply to youth in foster care at ages 14-21 and youth aged 14-23 who were in foster care at any point between ages 14-21.⁶
 - c. Mandate that local departments conduct life skills assessments and develop transition plans within 30 days of the foster care child reaching 14 years of age or within 30 days of a child who is 14 years or older when entering foster care.
 - d. Insert a requirement that life skills assessments and transition plans must be updated annually.

⁵ The regulation lists the following as examples of compelling reasons: the parent has made substantial progress towards eliminating the conditions that caused the foster care placement, the child can safely return home within six months, and the return home would be in the child’s best interest; or another permanency plan is better suited to meet the child’s needs.

⁶ As per DSS, the provision of independent living services follows the requirements of the John H. Chafee Foster Care Program for Successful Transition to Adulthood authorized in 42 U.S.C. 677 (4). The program expanded to age 23 to those states that have implemented extended foster care.

- e. Repeal the language relating to the independent living program for youth aged 18-21, as it has been made obsolete by the Fostering Futures program.⁷
 - f. Revise the annual credit check requirement to only apply to youth in foster care who are 14-18 years old.⁸
4. Pursuant to the 2019 foster care omnibus, the Board seeks to establish a maximum caseload of 15 cases per foster care worker and state that each child in foster care is considered to be an individual foster care case. While the omnibus bill only required that the Board establish a maximum caseload, the specific choice of the limit was made by the Board using the range recommended in the JLARC report based on caseload standards in other states.
 5. The Board seeks to add a new section 22 VAC 40-201-145 *Foster Care Complaint System*, which was also mandated by the 2019 foster care omnibus, delineating the steps to be taken by DSS in response to a complaint. The new section would require that DSS (i) investigate such complaint by conducting a review of case documentation, foster care policy, and state and federal code, and gather information from the constituent, local department, and other collaterals as needed, and (ii) provide the constituent a resolution to their concern that includes the methods used to assess the concern and a response to the concern, via the communication method of the constituent.

The new section would also state that “All information received or maintained by the Department in connection with such reports, complaints, or investigations shall be confidential and not subject to the Virginia Freedom of Information Act (FOIA, § 2.2-3700 et seq.), except that such information may be relayed and used on a confidential basis for the purposes of investigation and to protect the health, safety, and well-being of children in foster care.”⁹

⁷ The Fostering Futures program has been implemented through budget language since 2016, but was added to the Code of Virginia by Chapter 732 of the 2020 Acts of Assembly. See <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0732>.

⁸ The current requirement imposes the annual credit check on all youth in foster care who are fourteen years of age and older. The upper limit of eighteen years is derived from Chapters 676 and 677 of the 2019 *Acts of Assembly*. See <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=191&typ=bil&val=ch676>.

⁹ DSS cites Virginia Code § 2.2-3705.5 as the basis for its FOIA exemption. See <https://law.lis.virginia.gov/vacode/title2.2/chapter37/section2.2-3705.5/>.

Estimated Benefits and Costs

The proposed amendments would primarily benefit the children and families that the foster care system aims to serve. Specifying that local departments search for relatives at multiple points during the foster care placement process, and removing the requirement that relatives' homes be approved prior to placement, would benefit children who would otherwise be separated from their extended family.

While the move to enforce the termination of parental rights more swiftly may seem concerning, doing so would allow the child to become eligible for adoption and attain permanency. The exceptions provided by the Board include placements with relatives, where children would attain permanency with kinship guardians, and a range of situations where reunification remains a viable goal. The requirement that such exceptions be documented might pose an additional administrative burden, but ultimately provides greater transparency and accountability regarding the status of each child in the system. The expansion of independent living services would benefit those who were in foster care at any time between ages 14-21 until they turn 23. Moreover, these amendments would maintain compliance with the federal Chafee program, thereby allowing DSS to obtain federal funding for the same.

Implementing a maximum limit of 15 cases per caseworker not only benefits the children in foster care and their families, but also the caseworkers, some of whom previously had up to 30 cases. The caseload limit would also ensure that any additional administrative burden created by the other requirements described above can be reasonably met. Further adding a complaint system allows the Board to have greater oversight of complaints regarding foster care that may previously have been addressed without their knowledge or left unaddressed, even if such information is protected from broader access under FOIA.

The proposed amendments would also impose costs on the state as well as local governments. However, these costs result from the legislation that prompted them. The Fiscal Impact Statement (FIS) for the 2019 foster care omnibus (which included changes beyond those being implemented in this action) estimated the total cost to be roughly \$3.5 million in the first year and \$4.5 million in the second year.¹⁰ Although the FIS associated with Chapter 934 of the

¹⁰ See <https://lis.virginia.gov/cgi-bin/legp604.exe?191+oth+SB1339FER122+PDF> for a breakdown of expenditures allocated to the general fund, nongeneral fund, and local match.

2020 Acts does not indicate any direct costs, the increased case reviews and documentation requirements would impose additional time costs for caseworkers and other staff at local departments of social services.

Businesses and Other Entities Affected

The proposed amendments primarily affect all 120 local departments of social services as well as the local governments that are partly responsible for funding them.

Small Businesses¹¹ Affected

The proposed amendments would have no effect on small businesses.

Localities¹² Affected¹³

The proposed amendments broadly increase the responsibilities to be undertaken by case workers and local departments of social services. To the extent that this leads to new hiring or overtime by the staff, the proposed amendments would introduce new costs for local governments. Some of these costs would be absorbed by DSS using federal funding earmarked for such use; for example, increased eligibility for independent living services arising from the increased age limit would create costs that would be covered in part through the funding provided by the federal Chafee program.

The proposed caseload limit would increase the costs for local governments where caseworkers previously had more than 15 cases each on average, since these local departments would need to hire additional caseworkers. According to the FIS accompanying the 2019 foster care omnibus, “As of the January 2, 2019 Active Foster Care Children Report, 25 localities have between one and eight family services specialists, each of whom carries a foster care caseload of between 16 to 30 foster care children. These specific 25 localities would need funding for the equivalent of an additional 25.5 positions, in order for each of their specialists to have no more than 15 assigned foster care cases. The estimated annual cost for one family services specialist is \$84,180, therefore 25.5 new local specialists will cost \$1,609,952 the first year and \$2,146,602

¹¹ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

¹² “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹³ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

each year thereafter.”¹⁴ Note the costs listed here refer to the total costs and localities would only be responsible for roughly 15.5 percent of the overall costs, with state general and nongeneral fund allocations covering the bulk of the costs.

Since the caseload limit has already been implemented, DSS reports that for fiscal year 2020, 29 localities and combined localities received a total of \$1,862,486 representing funding for the first nine months. The local departments receiving these funds, some of which serve multiple localities, are as follows: Alleghany/Covington, Amherst, Appomattox, Augusta/Staunton/Waynesboro, Bedford, Carroll, Franklin County, Henrico, Loudoun, Louisa, Madison, Nelson, Rappahannock, Rockbridge/Buena Vista/Lexington, Rockingham/Harrisonburg, Scott, Spotsylvania, Tazewell, Washington, Wise, Bristol, Galax, Hampton, Norfolk, Portsmouth, Richmond City, Roanoke City, Virginia Beach, and Winchester.¹⁵

Projected Impact on Employment

The proposed amendments would directly contribute to the employment of at least 25 caseworkers by local departments.

Effects on the Use and Value of Private Property

The proposed amendments would not affect the use and value of private property. Real estate development costs would not be affected.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

¹⁴ See <https://lis.virginia.gov/cgi-bin/legp604.exe?191+oth+SB1339FER122+PDF>.

¹⁵ A list of all local departments can be found at <https://www.dss.virginia.gov/localagency/index.cgi>.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.