

Office of Regulatory Management

Economic Review Form

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC 35-46
VAC Chapter title(s)	Regulations for Children's Residential Facilities
Action title	Amendments to align with the Family First Prevention Service Act (FFPSA)
Date this document prepared	September 27, 2023; Revised October 24, 2023 (mandate count)
Regulatory Stage (including Issuance of Guidance Documents)	Final

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<ul style="list-style-type: none"> A QRTP shall have registered or licensed nursing staff and other licensed clinical staff who: 1) Provide care within the scope of their practice as defined by state law; 2) Are on-site according to the treatment model referred to in subsection A; and 3) Are available 24 hours a day and seven days a week. The QRTP is not required to acquire nursing or other clinical staff solely through means of a direct employer to employee relationship. <p>Direct Costs: This regulatory change creates cost for providers through additional staffing requirements. This regulatory action allows for flexibility in the way a provider chooses to meet this requirement.¹ A provider could directly employ licensed nursing and clinical staff in a 24/7 capacity, a provider could contract with an agency to ensure that providers are available on-call 24/7 and are able to be dispatched on-site if needed, or a combination of direct employment and contract agreements. While costs to providers will vary depending on the employment arrangement chosen, the cost of meeting this requirement through direct employment of an LPN and Nursing Assistant is \$537,258 per provider per year, the cost impact for all 39² Therapeutic Group Home (TGH) providers for this service is estimated to be \$20,953,062.</p>
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¹ In response to a comment received at the Emergency/NOIRA stage, DBHDS clarified that after care may be provided in-person or through an on-call arrangement.

https://townhall.virginia.gov/L/GetFile.cfm?File=65\5849\9581\AgencyStatement_DBHDS_9581_v4.pdf

² A previous version of this document stated that there were 15 providers impacted by this regulation. This document provides the correct number, 39, which resulted in an overall cost increase in this analysis.

Direct Benefits: This regulatory action aligns QRTPs with a trauma informed treatment model. In theory, the use of a trauma informed model should improve outcomes for children placed in QRTPs. Improved outcomes may include the reunification of a child with their family in the family home setting and a reduction in traumatic events experienced by the child. Research has shown that traumatic events can result in long term behavioral health and chronic physical health conditions.³ The avoidance of such health conditions is likely to result in cost savings to the Commonwealth, as well as to the individual, as the cost of future treatment would be prevented, and the individual would be less likely to suffer disruptions in employment associated with poor mental and physical well-being. Additional data is needed on the impact that this trauma informed model has on these outcomes, therefore, **an exact benefit cannot be calculated at this time.**

- **The QRTP shall facilitate outreach to the family members of the child, including siblings, document how the outreach is made, including contact information, and maintain contact information for any known biological family and fictive kin of the child. Documentation of outreach to family members and contact information of family members shall be placed within the child's record at the QRTP. The QRTP shall document how family members are integrated into the treatment process for the child, including after discharge, and how sibling connections are maintained. Documentation of family member integration shall be placed within the child's record at the QRTP. The QRTP shall provide or ensure discharge planning and family-based aftercare support for at least six months following discharge.**

Direct Costs: This regulatory action does not specify the method by which QRTPs shall facilitate and document outreach to family members. It may be possible for a QRTP provider to meet the outreach, documentation, care integration, and discharge planning requirements through existing staff resources. For the purposes of this cost benefit analysis, we assume that additional resources of a full time social worker are needed to meet this requirement. The estimated cost of employing a full-time administrative assistant and full-time social worker is \$72,730 per QRTP, or **\$2,836,454** across all 39 TGH.

Direct Benefits: FFPSA was enacted with the intent to avoid

³ <https://www.samhsa.gov/trauma-violence>

unnecessary separation of children from their families and provide parents and family with the services needed to maintain in-home placement.⁴ Providing outreach and care coordination services to the family members of children placed in QRTPs is intended to increase the likelihood that a family can be reunited after a child has received treatment. Decreasing the number of children in a foster care or congregate care settings is likely to create economic benefits for the Commonwealth and the Federal government, as it will reduce the number of children for which the government provides maintenance payments. For example, foster parents receive a Standard Maintenance Payment to offset the costs of caring for a child. The amount of the payment is variable to the child age, unique needs, and other factors.

The average stipend is roughly \$603.66 per month.⁵ There are approximately 5,400 children in foster care system in Virginia.⁶ If FFPSA results in a 10% reduction in the number of children placed in foster care, Virginia and the Federal government can expect to share savings of \$3,911,716 a year (540 children x \$603.33/month x 12 months). However, FFPSA has not been enacted long enough for sufficient data to be collected about these outcomes, therefore, **an exact benefit cannot be calculated at this time.**

- **The QRTP shall be licensed in accordance with 42 USC § 471(a)(10) and accredited by any of the following independent nonprofit organizations: 1. The Commission on Accreditation of Rehabilitation Facilities (CARF); 2. The Joint Commission on Accreditation of Healthcare Organizations (JCAHO); 3. The Council on Accreditation (COA); or 4. Any other independent, nonprofit accrediting organization approved by the U.S. Secretary of Health and Human Services.**

Direct Costs: A survey of providers indicated that the majority of DBHDS licensed providers sought accreditation from the Council of Accreditation. Costs for accreditation are based on a sliding scale based on the organization's most recent audited gross annual revenue and, therefore, will vary based on the circumstances of each provider. The estimated cost for accreditation for each provider is \$12,692 over 4 years, or \$3,173 per year. When applied to all 39 licensed providers, the cost of this regulatory action is **\$123,747** per

⁴ <https://familyfirstact.org/about-law>

⁵ Figure is the average of maintenance payment rates of \$496 per month for children aged 0-4, \$580 per month for children aged 5-12, and \$735 a month for children aged 13 and over.

⁶ <https://www.dss.virginia.gov/adoption/>

year.

Direct Benefits: Accreditation by an independent organization ensures consistent high quality of care and increased system confidence in the performance of each QRTP. It is likely that improved quality of care will result in improved outcomes for children served by these programs, however, it is too early to gather sufficient data about the impact of accreditation, therefore, **an exact benefit cannot be calculated.**

- **Additional requirements for QRTP placements for children within the custody of local social service boards: The qualified residential treatment program (QRTP) shall coordinate with the local departments of social services, the child's biological family members, relative and fictive kin of the child, and, as appropriate, professionals who are a resource to the family of the child, such as teachers, clergy, or medical or mental health providers who have treated the child.**

Direct Costs: This requirement applies only for QRTP placements for children within the custody of local social service boards. It is expected that this requirement can be met through the employment of additional staff as required in the above regulation on family outreach and care integration, therefore, there is **no direct cost associated with this requirement.**

Direct Benefit: Increased integration of the family unit and family resources (clergy, teachers, mental health providers) may result in improved outcomes for the child, however, there is not sufficient data available to support this claim, therefore, **an exact benefit cannot be calculated.**

- **Alignment with FFPSA.**

Direct Costs: There are no direct costs to the alignment of this regulation with FFPSA requirements.

Direct Benefit: FFPSA made Therapeutic Group Homes ineligible for receipt of Title IV-E funds, unless licensed as a QRTP. The establishment of a QRTP license provides an avenue for providers to continue to receive Title IV funding. The Virginia Department of Social Services (VDSS) reported that there are approximately 193 children placed in Therapeutic Group Home (TGH) placements. In applying the current title IV-E penetration rate of 48.63%, there

	would be 94 kids potentially eligible for title IV-E. With the average of \$260 per day for TGH placements, the total annual cost for these youth is \$8,915,712 and the annual cost savings to the state would be \$4,457,856 in IV-E claiming. However, children may not stay a full year in the facility.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) \$23,913,263 (c) 210,104,533	(b) \$4,457,856 (d) \$39,167,208
(3) Net Monetized Benefit	-\$170,937,325	
(4) Other Costs & Benefits (Non-Monetized)		
(5) Information Sources	<p>See Appendix Table 1 for compensation information and sources.</p> <p>See Appendix Table 2 for estimated cost calculations of full-time employment of an LPN and Nurse Assistant, and Table 3 for the cost of employing an on-call LPN and Nurse Assistant through a staffing agency. Costs were calculated assuming a 40% agency markup on the hourly cost of labor, which is within the industry range. Fringe costs for full time employees were calculated using the percentages found in Table 6.</p> <p>See Appendix Table 5 for the estimated yearly cost of accreditation with the Council on Accreditation. This cost represents the minimum cost of accreditation and is subject to increase based on provider gross annual revenue.</p>	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	This table is not applicable as this regulatory change was required by Item 318.D. of the 2021 Appropriation Act and based on FFPSA, which is federal law. No alternative to this regulatory action is available.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a)	(b)
(3) Net Monetized Benefit		

(4) Other Costs & Benefits (Non-Monetized)	
(5) Information Sources	

Table 1c: Costs and Benefits under Alternative Approach(es)

(1) Direct & Indirect Costs & Benefits (Monetized)	This table is not applicable as this regulatory change was required by Item 318.D. of the 2021 Appropriation Act and based on FFPSA, which is federal law. No alternative to this regulatory action is available	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a)	(b)
(3) Net Monetized Benefit		
(4) Other Costs & Benefits (Non-Monetized)		
(5) Information Sources		

Impact on Local Partners

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	The proposed amendments do not introduce costs for LDSS or for local governments.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a)	(b)
(3) Other Costs & Benefits (Non-Monetized)		

(4) Assistance	
(5) Information Sources	

Impacts on Families

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	This regulatory change would likely have a beneficial impact on families, as it is based on the FFPSA law which was intended to preserve the family unit and avoid unnecessary family separations through placement in foster care or congregate care setting. While beneficial to a family's well-being, there is not sufficient data available to calculate a quantitative benefit of family unification, nor is there sufficient data available to demonstrate the impact of this regulatory change on the number of children separated from the family unit.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a)	(b)
(3) Other Costs & Benefits (Non-Monetized)		
(4) Information Sources		

Impacts on Small Businesses

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	The proposed amendments appear to adversely affect small businesses, however, the number of affected entities that are small businesses is unknown. Small businesses that are impacted are expected to incur the costs described in Table 1a of additional staffing requirements and costs of independent accreditation.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a)	(b)

(3) Other Costs & Benefits (Non-Monetized)	
(4) Alternatives	
(5) Information Sources	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

Change in Regulatory Requirements

VAC Section(s) Involved	Authority of Change	Initial Count	Additions	Subtractions	Net Change
12VAC35-46	Statutory:	121*	10**	0	10
New Sections: -1260 -1270	Discretionary:	1067*	1 – Subsection B.		1

(Adjusted to *2023.08.14 Baseline Total with Negatives: 1011 + 64 Post 2020 in one action, ASAM criteria.)

(**With one exception, all amendments are federal or state mandates on the regulant due to General Assembly mandate to promulgate regulations “to amend the children's residential facility licensing regulations to align with the requirements of the federal Family First Prevention Service Act for children's residential service providers to meet the standards as qualified residential treatment programs (QRTPs)...”)

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
1260 B	Staffing requirements; registered or licensed nursing staff and other clinical staff; available on-site in accordance with treatment model; available 24 hours a day and seven days a week.	\$0	\$537,258	\$20,953,062 (cost x 39 providers)
1260 D	Family outreach and documentation requirements.	\$0	\$72,730	\$2,836,454 (cost x 39 providers)
1260 G	Licensure and accreditation requirements.	\$0	\$3,173	\$123,747 (annual cost x 39 providers)

	Regulation Alignment to FFPSA. Alignment allows for Title IV-E funding.	\$0	-\$4,457,856	-\$4,457,856 (cost savings)
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Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
1260	QRTP staffing requirements, family participation, outreach, and integration into treatment plan, discharge support and timelines, licensure and accreditation requirements.	Establishment of new regulation where none previously existed.
1270	Coordination and documentation requirements for QRTP placements for children within custody of local social services boards.	Establishment of new regulation where none previously existed.

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	Original Length	New Length	Net Change in Length
None.			

Appendix**Table 1: Salary Information and Sources**

Position	Compensation	Source
LPN in VA	\$48,430	BLS, Occupational Employment and Wage Statistics
Nurse Assistant in VA	\$30,890	BLS, Occupational Employment and Wage Statistics
Child and Family Social Worker in VA	\$58,100	BLS, Occupational Employment and Wage Statistics
Hourly Rate On-Call LPN	\$27	https://www.ziprecruiter.com/Salaries/On-Call-LPN-Nurse-Salary-per-Hour
Hourly Rate On-Call Nurse Assistant	\$20*	https://www.ziprecruiter.com/Jobs/On-Call-CNA
*This figure is approximate, and based on compensation information ranging from \$18-\$23/hour		

Table 2: Cost of Full Time LPN and Nurse Assistant

Position	Salary	Fringe	Total Annual Compensation
FT LPN	\$48,430	\$12,194.67	\$60,624.67
FT Nurse Assistant	\$30,890	\$7,778.10	\$38,668.10
			\$99,292.78

Table 3: Cost of Contract LPN and Nurse Assistant for Off-Hours

Position	Hourly Rate	Contract Agency Markup - 40%	Hours (128 hours/week x 52 weeks/year)	Annual Cost
On-Call LPN	\$27	\$37.80	6656	\$251,596.80
On-Call Nurse Assistant	\$20	\$28	6656	\$186,368
				\$437,964.80

Table 4: Cost of Employing a Full Time Social Worker and Administrative Assistant

Position	Salary	Fringe	Total Annual Compensation
Child and Family Social Worker in VA	\$58,100	\$14,629.58	\$72,729.58

Table 5

All fees are estimates, as accreditation fees are based on a sliding scale of provider size. All figures were found on the Council on Accreditation website, <https://coanet.org/>.

Estimated Council on Accreditation Fee	
Accreditation Fee*	\$7,392
Site Visit Fee	\$2,200
Reviewer Fee**	\$1,900
Maintenance Fee***	\$1,200
Total Cost for 4 Years	\$12,692
Cost Per Year	\$3,173
Cost Per Year x 39 Providers	\$123,747
<p>*This figure represents the minimum accreditation fee, providers with gross annual revenue above \$500,000 may be subject to a higher fee. ** This figure represents the cost for a reviewer at the minimum level of 2 reviewers over 2 days at \$475 per day. *** The Maintenance Fee is a \$400 fee paid on the first, second, and third anniversary of accreditation. To calculate total costs of accreditation the fee is expressed as one payment of \$1,200.</p>	

Table 6

Type	Percentage
VRS	14.46%
Group Life	1.34%
Social Security	6.20%
Medicare	1.45%
Retiree Health Credit	1.12%
Disability-Regular	0.61%

COST BENEFIT ANALYSIS

INTERIM	v. July 28, 2022
Discount Rate:	3%
Time horizon:	10 years

DO NOT CHANGE THIS NUMBER unless you wish to use a different rationale

Notes:

1. Year 0 represents the current fiscal year
2. Options 1 & 2 below correspond to the two options in the grocery cart example. Option 3 below provides an example of a third option.
3. Replace the values in the green cells below with the expected costs and benefits for your analysis. Insert zero (0) for any values that are zero.
4. The sections for options 2 and 3 must be filled out if the agency has any discretion over the proposed regulatory change.

Year	Option 1		Option 2	
	Cost	Benefit	Cost	Benefit
0	23,913,263	4,457,856		
1	23,913,263	4,457,856		
2	23,913,263	4,457,856		
3	23,913,263	4,457,856		
4	23,913,263	4,457,856		
5	23,913,263	4,457,856		
6	23,913,263	4,457,856		
7	23,913,263	4,457,856		
8	23,913,263	4,457,856		
9	23,913,263	4,457,856		
TOTAL	239,132,630	44,578,560		0

Year	Option 1		Option 2		Present Value
	Cost	Benefit	Cost	Benefit	
0	23,913,263	4,457,856			0
1	23,216,760	4,328,016			0
2	22,540,544	4,201,957			0
3	21,884,023	4,079,570			0
4	21,246,624	3,960,747			0
5	20,627,791	3,845,386			0
6	20,026,981	3,733,384			0
7	19,443,671	3,624,645			0
8	18,877,351	3,519,073			0
9	18,327,525	3,416,575			0
TOTAL	210,104,533	39,167,208			0

	Option 1	Option 2
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Benefit-Cost Ratio	0.19	#DI
Net Benefit	-170,937,325	