



Economic Impact Analysis Virginia Department of Planning and Budget

22 VAC 40-700 – Department of Social Services Child Protective Services Central Registry Information August 7, 2002

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

The proposed amendments will replace “clear and convincing evidence” standard of proof for a founded case with “preponderance of the evidence” and eliminate the “reason to suspect” category from the Child Abuse and Neglect Central Registry.

Estimated Economic Impact

This regulation contains rules for determining when the names of individuals involved in child abuse and neglect investigations must be entered into the Child Protective Services Central Registry by local departments of social services and how long that information must be retained in the registry. The current rules establish three levels of founded cases that involve injuries/conditions with serious, moderate, and minimal harm to a child. Depending on the seriousness of the founded case, the name of the abuser is maintained in the central registry for 3, 7, or 18 years. This information is accessible to the Department of Social Services (the department), to local departments of social services, to the persons themselves named in the central registry or their agents upon written and notarized request, and to child welfare agencies

such as child day centers, child placement agencies, child-caring institutions, family day homes, and independent foster homes to do a background check in the central registry on a prospective employee with the employee's written and notarized consent.

One of the proposed amendments will lower the standard of proof for a founded case from "clear and convincing evidence" to "preponderance of the evidence" to conform with the department's primary Child Protective Services regulation, 22 VAC 40-705. The primary regulation requires the standard of proof "preponderance of the evidence" since it was promulgated and implemented in 1998. Since then, the department has been using this standard of proof in practice. It is believed that this change in 1998 has been increasing the number of founded cases. Since the proposed regulations merely reflect the current practice followed by the department, no effect on the number of founded cases is expected.

The current discrepancy between this regulation and the primary Child Protective Services regulation has been creating some confusion in enforcement and creating litigation costs to the department and the alleged abusers. The department indicates that the current discrepancy in determining founded cases resulted in a case against the department and was recently settled out of court. If this discrepancy is not corrected, there is believed to be a chance for a class action suit. Thus, the proposed amendment to make the standard proof in this regulation and the main Child Protective Services regulation consistent with each other will likely produce cost savings to the department and the individuals involved in terms of avoided litigation costs in the future. However, the department is not aware of the number of the potential cases that will be prevented and the size of potential cost savings.

The proposed amendments will also eliminate the "reason to suspect" category from central registry entries pursuant to a 1995 Virginia Court of Appeals decision in *Jackson v. Marshall*. The court ruled that the only dispositions allowed by the Code of Virginia are "founded" and "unfounded" and that, there cannot be a "reason to suspect" finding in the department's investigations. As a result of eliminating "reason to suspect" category, the department purged approximately 3,278 names from the central registry in 1995. Although it is not known how many total "reason to suspect" dispositions were added to the central registry prior to 1995, on an annual basis, 3,387 dispositions in 1992, 3,137 dispositions in 1993, and

2,830 dispositions in 1994 were recorded under “reason to suspect” category.¹ Also, the elimination of this category resulted in an increased number of unfounded cases in 1995 and forward. For example, the number of unfounded cases jumped from 24,836 in 1994 to 27,896 in 1995 while total completed complaints increased approximately by only 400, an indication that the most of the increase in unfounded cases can be attributed to eliminating “reason to suspect” category rather than an increase in the number of complaints. Since this proposed amendment will not have any effect on the practice followed by the department, no significant economic effect is expected other than eliminating potential confusion that may be present due to discrepancy between agency practice and what is stated in the regulations. This clarification may provide some cost savings to the department and the associated individuals by avoiding potential confusion that may otherwise occur.

Businesses and Entities Affected

The proposed regulations apply to individuals in Child Protective Services Central Registry. Currently, the central registry contains approximately 19,121 entries. However, since the two proposed changes have been already followed in practice for a number of years, no entities are expected to be affected upon promulgation of the proposed regulations.

Localities Particularly Affected

The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment

No significant effect on employment is expected.

Effects on the Use and Value of Private Property

The proposed amendments are unlikely to result in significant effects on the use and value of private property.

¹ Source: Department of Social Services.