



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

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**22 VAC 40-151 Standards for Licensed Children’s Residential Facilities**  
**Department of Social Services**  
**Town Hall Action/Stage: 5370/9388**  
September 30, 2022

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The Department of Planning and Budget (DPB) 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 19. The analysis presented below represents DPB’s best estimate of these economic impacts.<sup>1</sup>

## **Summary of the Proposed Amendments to Regulation**

The State Board of Social Services (Board) proposes to amend the standards for licensed children’s residential facilities (CRFs) to align with the requirements of the federal Family First Prevention Services Act (FFPSA) of 2018, the federal Preventing Sex Trafficking and Strengthening Families Act of 2014, and Chapter 551 of the 2010 Acts of Assembly.

## **Background**

CRFs licensed by the Department of Social Services (DSS) accept children who are separated from their parents or guardians in order to provide full-time care, maintenance, protection and guidance, or for the purpose of providing independent living services to person between 18 to 21 years of age who are in the process of transitioning out of foster care. Children are temporarily placed in a CRF to address the child’s needs, typically for less than a year. The Board seeks to make a number of changes to 22 VAC 40-151 *Standards for Licensed Children’s Residential Facilities* that would conform the regulation to federal and state law and update the

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<sup>1</sup> Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis 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.

language to remove unnecessary definitions and clarify current requirements. Specifically, the proposed amendments would align the regulation with the requirements of the FFPSA, the Preventing Sex Trafficking and Strengthening Families Act, and changes to Virginia statute enacted by the 2010 General Assembly, and make additional changes that are intended to ensure the well-being of children and youth residing in a CRF.

The FFPSA restructured federal spending on services for families and youth so as to prioritize keeping children with their families over placing them in foster care.<sup>2</sup> The law authorized new optional Title IV-E funding for time-limited mental health services, substance use treatment, and parenting skill-based programs.<sup>3</sup> It also changed the role of community service providers, how courts make decisions for families, and the types of placements that can be made.<sup>4</sup> Accordingly, the most substantive changes in this action would be to add two new sections to the chapter: 22 VAC 40-151-1030 *Qualified residential treatment program* and 22 VAC 40-151-1040 *Additional requirements for foster children placed in a qualified residential treatment programs*.

The proposed new section 1030 would require Qualified Residential Treatment Programs (QRTPs) to have a trauma-informed model that is “designed to address the needs, including clinical needs as appropriate, of children with serious emotional or behavioral disorders or disturbances” and be able to implement the treatment identified for the child. In addition to the existing staffing requirements for children’s residential facilities, QRTPs are also required to have registered or licensed nursing staff and other licensed clinical staff who (i) provide care on-site according to the treatment model, and (ii) are available 24 hours a day, seven days a week. The text specifies that QRTPs are not required to acquire nursing or other clinical staff solely through a direct employer-employee relationship. This means that the additional staffing requirements could be sub-contracted through nursing agencies or met through other contractual agreements.

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<sup>2</sup> See <https://familyfirstact.org/about-law>.

<sup>3</sup> See <https://www.acf.hhs.gov/cb/title-iv-e-prevention-program>.

<sup>4</sup> See <https://www.childwelfare.gov/topics/systemwide/laws-policies/federal/family-first/>.

To further the goals of the FFPSA, QRTPs must facilitate and document outreach to family members (known biological family, including siblings, and fictive kin<sup>5</sup>) and the ways in which family members are integrated into the treatment process for the child. QRTPs must also provide or ensure discharge planning and family-based post-discharge support for at least six months following discharge. Finally, QRTPs must be licensed in accordance with and accredited by an independent, nonprofit, accrediting organization approved by the United States Secretary of Health and Human Service.

The proposed new section 1040 contains additional requirements that would apply for foster children. For these children, QRTPs must coordinate with the child's placing agency, legal guardian, biological family members, relative and fictive kin, and, as appropriate, other professionals who have served as a resource for the child. QRTPs are also required to maintain all documents pertaining to the child's need for placement in the child's record including the initial assessment and any written documentation of the approval or disapproval of the placement by a court or administrative body.

The Preventing Sex Trafficking and Strengthening Families Act of 2014 mandated the addition of the "reasonable and prudent parent standard" defined in 42 U.S.C. § 675 (10) (A) and policies and procedures to support normalcy for children in foster care, including children and youth in foster care residing in a CRF.<sup>6</sup> Chapter 631 of the 2016 Acts of Assembly amended Virginia Code § 63.2-904 to conform statute to these federal requirements.<sup>7</sup> To align with federal requirements and state statute, the Board proposes to add definitions of "reasonable and prudent parental standard," "normalcy," and establish standards and training on these topics for CRF staff.

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<sup>5</sup> "Fictive kin" both here and in the regulation means "persons who are not related to a child by blood or adoption but have an established relationship with the child or his family." See <https://law.lis.virginia.gov/vacode/title16.1/chapter11/section16.1-228/>.

<sup>6</sup> See <https://www.congress.gov/bill/113th-congress/house-bill/4980> for a summary of the Act. "Reasonable and prudent parent standard" is defined as "the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities." (<https://www.law.cornell.edu/uscode/text/42/675>)

<sup>7</sup> See <https://lis.virginia.gov/cgi-bin/legp604.exe?161+ful+CHAP0631+hil>.

Lastly, Chapter 551 of the 2010 Acts of Assembly required DSS to provide information about shaken baby syndrome to child welfare programs, foster and adoptive parents, and staff of child day programs and CRFs. The proposed changes would add shaken baby syndrome under training requirements for CRF staff, conforming the regulation to requirements currently in §63.2-1737 of the Code of Virginia.<sup>8</sup>

Other proposed changes include adding a requirement to review and update behavior support plans, and a requirement to document an inventory of resident's clothing and personal belongings at the time of admission and discharge. The proposed changes would also clarify that cardio-pulmonary resuscitation (CPR) training include an in-person competency demonstration, clarify requirements about fire inspections, update and clarify requirements regarding the educational needs of foster care children at CRFs, and clarify that the term "child" applies to any person under 18 years of age and that the term "resident" applies to any child or young adult admitted to a CRF.<sup>9</sup>

### **Estimated Benefits and Costs<sup>10</sup>**

As mentioned previously, CRFs licensed by DSS accept children who are separated from their parents or guardians for full-time care, or for the purpose of providing independent living services to person between 18 to 21 years of age who are in the process of transitioning out of foster care. DSS reports that these facilities serve children whose mental health and behavioral needs are less acute and severe as compared to facilities licensed by the Department of Behavioral Health and Developmental Services (DBHDS). Children are placed in a CRF temporarily to address specific needs; DSS reports that the typical length of stay is less than a year. Federal and state law requires that children enter into permanency either by returning to family or relatives or through adoption when the child has been in care for 15 months.

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<sup>8</sup> See <https://lis.virginia.gov/cgi-bin/legp604.exe?101+ful+CHAP0551+hil>. Informational material developed by DSS on shaken baby syndrome can be found at [https://www.dss.virginia.gov/family/cps/shaken\\_baby.cgi](https://www.dss.virginia.gov/family/cps/shaken_baby.cgi).

<sup>9</sup> Requirements pertaining to CPR training and fire inspection records are based on OSHA requirements and are not subject to DSS' discretion.

<sup>10</sup> The Economic Impact Analysis compares the proposed regulation to the regulation in the Virginia Administrative Code. The emergency regulation is: 1) not in the Virginia Administrative Code (see <http://law.lis.virginia.gov/admincode>) and 2) temporary. Thus, the Economic Impact Analysis assesses the impact of changing the permanent regulations. Consequently, to the extent that the proposed text matches the emergency text, some of the benefits and costs described here have likely already accrued.

Before FFPSA was enacted, all CRFs were able to receive children who were eligible for Title IV-E funding. However, once FFPSA was enacted, these facilities became ineligible for Title IV-E funds because they did not meet the new standards.<sup>11</sup> Establishing the QRTP license with the FFPSA standards allows CRFs to become QRTPs and thus maintain their eligibility for Title IV-E funding. According to DSS, the types of programs that should be QRTPs are, “Non-family based residential programs who care for children in foster care who are eligible for IV-E funding. Any type of [non-family based residential] program licensed by DSS, DBHDS or DJJ [Department of Juvenile Justice], regardless of whether it is or is not a Medicaid provider, can apply to be a QRTP.”<sup>12</sup> DSS currently has 16 licensed CRFs, two of which have already obtained QRTP designation. DSS reports that at the end of fiscal year 2022 there were 15 QRTP placements in VDSS CRFs.<sup>13</sup>

The state benefits from the availability of licensed QRTP facilities because their presence allows for cost-sharing with the federal government via Title IV-E. Further, to the extent that QRTPs are able to facilitate the level of family integration that the FFPSA calls for, the proposed changes would also benefit children receiving residential treatment by providing them with a higher standard of care and mitigating the trauma of family separation.

However, in order to provide the higher standard of care, CRFs must incur additional costs to obtain and maintain their QRTP license. These include direct costs in terms of staffing and accreditation requirements and indirect costs arising from the effort required to develop a trauma-informed model, maintain relationships with families, coordinate care with various parties, provide discharge planning and family-based aftercare for six months, and maintain additional paperwork, all of which require staff time.<sup>14</sup> Neither DSS nor DBHDS or other state agencies have any discretion in the QRTP licensing standards since they stem from the FFPSA.

Due to the costs involved, some CRFs may elect not to become licensed as QRTPs. However, this impact would be by design, the FFPSA intends for fewer IV-E eligible children to

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<sup>11</sup> These payments have been covered in the interim by the Office of Children’s Services (OCS). Funds that were allocated for these payments at DSS were transferred over to OCS. However, since these payments do not fall under Title IV-E, the state does not receive any federal reimbursement for them.

<sup>12</sup> See [https://familyfirstvirginia.com/foster\\_care/qrtp\\_faq.html](https://familyfirstvirginia.com/foster_care/qrtp_faq.html).

<sup>13</sup> These numbers are based on the Adoption and Foster Care Report pulled on June 29, 2022 and received in an email from DSS dated August 5, 2022.

<sup>14</sup> The costs are also highly variable. For instance, DSS reports that the five accrediting organizations listed in the proposed text charge fees ranging from \$995 to \$13,412. See the Agency Background Document, page 6.

be placed in institutional settings, and for such placements to be shorter in length, as family-based settings are prioritized and better supported through other interventions. DSS does not collect information on whether CRFs are already accredited, and it is uncertain whether other CRFs would pursue QRTP designation.

The other proposed changes would apply to all 16 currently licensed CRFs as well as facilities that seek licensure from DSS in the future. These include initial and annual training requirements for staff regarding the reasonable and prudent parent standard and shaken baby syndrome, both of which are required by federal or state law, as described above. The only new requirements that would apply to all CRFs are as follows: (i) that residents' personal belongings be documented at admissions and discharge, and that such documentation be provided to the legal guardian or legally authorized representative, (ii) that medical procedures or treatments ordered by a physician or other prescriber be provided according to instructions and documented in the resident's health record, (iii) that all medication be locked and properly labeled, except emergency medication as provided by a physician's order, provided the facility has a department approved plan to ensure residents' safety, and (iv) that the gender of witnesses to pat downs be of the same gender as the resident being searched.

### **Businesses and Other Entities Affected**

As mentioned previously, DSS reports that there are 16 licensed CRFs, all privately owned and operated, that would be affected by some of the proposed changes regarding training and documentation requirements. In addition, the two CRFs currently licensed as QRTPS as well as any CRFs that choose to become QRTPs would have to incur additional costs to obtain accreditation and meet other requirements of the QRTP designation.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>15</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, the proposed amendments would create some new costs for all CRFs,

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<sup>15</sup> 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. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

even if the bulk of those costs arise from conforming to federal and state law and have already been incurred, to some extent, to comply with those laws. The new requirements in the proposed amendments, described above, could be absorbed by existing staff without imposing a significant burden on staff time. Thus, compliance costs associated with these requirements are likely to be minimal. However, an adverse impact is indicated since these requirements are new and result in a nominal increase in net costs for CRFs.

### **Small Businesses<sup>16</sup> Affected:<sup>17</sup>**

#### Types and Estimated Number of Small Businesses Affected

DSS reports that all 16 CRFs are small businesses. Thus, the proposed amendments appear to adversely affect small businesses.

#### Costs and Other Effects

As mentioned previously, the proposed amendments include additional training and documentation requirements for CRF staff regarding shaken baby syndrome and the reasonable and prudent parent standard. Other requirements listed above are likely to have modest compliance costs in terms of paperwork and staff time.

#### Alternative Method that Minimizes Adverse Impact

These training standards are based on the federal and state law. Thus there is no appropriate alternative.

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<sup>16</sup> 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.”

<sup>17</sup> 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.

**Localities<sup>18</sup> Affected<sup>19</sup>**

The proposed amendments do not disproportionately affect particular localities and do not introduce costs for local departments of social services or for local governments. Consequently, an adverse economic impact<sup>20</sup> is not indicated for any localities.

**Projected Impact on Employment**

The proposed amendments could increase the employment of registered or licensed nursing staff or licensed clinical staff, to the extent that CRFs become QRTPs.

**Effects on the Use and Value of Private Property**

The proposed amendments raise costs for CRFs, which would reduce their value. However, these costs are expected to be modest and likely to be recouped through the rate-setting process. Some facilities will incur costs to be licensed as QRTPs, but they would benefit by being eligible to receive Title IV-E covered placements. The proposed amendments do not affect real estate development costs.

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<sup>18</sup> “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.

<sup>19</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

<sup>20</sup> Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.