



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

22 VAC 40-211 – Resource, Foster and Adoptive Home Approval Standards
Department of Social Services
December 4, 2014 (revised December 8, 2014)

Summary of the Proposed Amendments to Regulation

The State Board of Social Services (Board) proposes to amend its regulation that governs approval of resource, adoptive and family homes. Specifically, the Board proposes to:

- 1) amend language to increase the clarity of the regulation,
- 2) amend the definition of “caretaker” to conform it to a recent Virginia Court of Appeal decision,
- 3) allow providers to submit the results of a physical exam done within 13 months (rather than 12 months) of application for approval,
- 4) remove language that currently governs the issuance of variances to requirements of this regulation,
- 5) change the firearms storage requirements provisions in this regulation so that they mirror state code,
- 6) add a requirement that providers receive training on mandated reporter laws and responsibilities since the General Assembly made resource, adoptive and foster parents mandated child abuse and neglect reporters in 2012 and
- 7) add a requirement that providers complete annual training outlined in Section 1.5.7 of Chapter D of the Child and Family Services Manual as a condition of re-approval.

Result of Analysis

Benefits likely outweigh costs for most of the Board's proposed regulatory changes. There is insufficient information to gauge whether benefits will outweigh costs for at least one proposed change. For one proposed change, costs will likely outweigh benefits.

Estimated Economic Impact

Most of the changes proposed by the Board in this action are aimed at making this regulation more easily understood and descriptive for interested parties. For instance, the Board proposes to add definitions for "foster care placement" and "kinship foster parent" to this regulation. Additions such as these as well as revisions to existing regulatory language, which will help readers to understand the rules for approval of resource, adoptive and foster care providers, are unlikely to lead to any additional costs for affected entities. Individuals who need to (or want to) understand the approval processes contained in this regulation will benefit from the added clarity that these changes will bring.

Current regulation defines a "caretaker" as an individual who has the responsibility for caring for a child because (i) he/she is the parent or other person legally responsible for the child's care, (ii) he/she has assumed caretaking responsibility through an agreement with the parent or legally responsible person, (iii) he/she is responsible by virtue of his/her conferred authority or because (iv) he/she is an adult person residing in the same home as the child. Earlier this year, the Virginia Court of Appeals ruled that the regulation's definition was overly broad and went beyond the statutory definition in the Code of Virginia. Specifically, the court ruled that the Board could not deem someone who lives in the same house as a child a caregiver unless that person had explicitly agreed to care for the child. In response the Board now proposes to amend this definition so that it will comport with the court's ruling. No entity is likely to incur costs on account of this change. To the extent that this change increases clarity for both Board and Department of Social Services staff and the public, all affected parties will likely benefit from this change.

Current regulation requires that applicants for approval as resource, adoptive or foster parent submit the results of a physical examination done within 12 months of application approval. The Board proposes to extend this time period to 13 months to account for some insurance policy restrictions that do not allow reimbursement for more than one physical within a

12 month period. No one is likely to incur costs on account of this change. This change will benefit applicants who might currently have to pay out of pocket for a pre-approval physical or agencies that might choose to bear those costs for the applicants.

Currently, this regulation contains language that allows local Departments of Social Services to request variances from requirements of this regulation from the state Department of Social Services so long as the safety and welfare of a child is not jeopardized and so long as the variances do not violate federal or state law or local ordinances. The Board now proposes to eliminate this language in response to a change to controlling state law that occurred in 2012. The law change assigns the Commissioner of the state Department of Social Services the power to grant variances from approval requirements that would allow approval of kinship foster care placements so long as the variances do not jeopardize the health or safety of the child who is the subject of the placement. The Board believes that the 2012 law change contradicts other, older sections of the Code of Virginia that control issuance of variances and proposes to remove variance language from this regulation until the General Assembly addresses these contradictions. It is unclear whether this removal of variance language from the regulation will adversely impact the approval of kinship foster care, which is believed to be less disruptive and traumatic for the children involved. To the extent that variances that are currently approved would not be approved under the proposed regulation, affected children may be made worse off.

Current regulation contains firearm storage requirements that are more restrictive than those in state law. Currently, resource, adoptive and foster care parent providers must follow provisions for gun safety contained on Code of Virginia § 18.2-56.2 which reads:

A. It shall be unlawful for any person to recklessly leave a loaded, unsecured firearm in such a manner as to endanger the life or limb of any child under the age of fourteen. Any person violating the provisions of this subsection shall be guilty of a Class 3 misdemeanor.

B. It shall be unlawful for any person knowingly to authorize a child under the age of twelve to use a firearm except when the child is under the supervision of an adult. Any person violating this subsection shall be guilty of a Class 1 misdemeanor. For purposes of this subsection, "adult" shall mean a parent, guardian, person standing in loco parentis to the child or a person twenty-one years or over who has the permission of the parent, guardian, or person standing in loco parentis to supervise the child in the use of a firearm.

and also must follow rules in this regulation which require that firearms be stored with activated safety mechanisms (trigger locks, etc.) in a locked closet or cabinet with bullets stored in a separate locked area. Upon advice from the Assistant Attorney General for the Board that provisions in the regulation were unconstitutional, the Board proposes to remove current regulatory requirements for gun storage and explicitly insert a reference to the Code of Virginia § 18.2-56.2 that affected entities must follow. Although not explicitly mentioned in the proposed regulation, Code of Virginia § 18.2-371.1, which also would apply to all providers in the Commonwealth, makes it a Class 4 Felony for “Any parent, guardian, or other person responsible for the care of a child under the age of 18 who by willful act or omission or refusal to provide any necessary care for the child's health causes or permits serious injury to the life or health of such child.” To the extent that the more restrictive rules in current regulation may discourage people from becoming foster or adoptive parents, this change may lead to more individuals applying to be providers and more homes for agencies to place children in.

The General Assembly made another change to the Code of Virginia in 2012 and added resource, adoptive and foster parent providers to the list of entities that are mandated reporters of suspected child abuse and neglect. The Board now proposes to amend pre-service training requirements so that resource, adoptive and foster parent providers are trained on the relevant laws and responsibilities of mandated reporters. Affected providers will likely benefit from this change as it will allow them to know what is expected of them under the law. Time costs for the pre-services training will likely increase for those providers. To the extent that this proposed change extends the total time taken doing pre-services training, local and state Departments of Social Services may have to pay higher costs for either staff time or increased fees for contract training providers.

Current regulation requires providers to complete pre-service and annual in-service training. The Board proposes to add language to this requirement that makes completion of the required annual in-service training a condition of re-approval and proposes to require that providers complete the annual in-service training established in the state Department of Social Services guidance document, the Child and Family Services Manual. The first of these changes will only affect providers who are currently not completing required training. Those providers affected will incur costs for their time spent in training. Board staff reports that the Board is

choosing to make the second of these changes because they anticipate training will change quickly enough that it would be inefficient to list training requirements in this regulation rather than in Department of Social Services guidance. This approach, however, will likely cause search costs for providers who will not be able to know what is legally required of them without checking multiple sources. Providers and other interested parties would also suffer from a loss of transparency and opportunity to affect the rules that they must live by if the Board were allowed to legally require providers to follow rules that are in guidance rather than in regulation. It is possible, however, that the Board would have to follow the rulemaking process outlined in the Administrative Process Act every time that training requirements in the Child and Family Services Manual changes since this regulatory action would likely incorporate that document by reference. That being the case, it is unlikely that this change would shorten the process of changing training requirements but it will certainly make it more opaque and complicated for all parties involved.

Businesses and Entities Affected

This proposed regulation will affect all resource, adoptive and foster care providers licensed under the auspices of the Board as well as the children they care for or parent. Staff at the 119 local Departments of Social Services throughout the Commonwealth will also be affected.

Localities Particularly Affected

No localities will likely be disproportionately affected by this proposed regulatory change.

Projected Impact on Employment

This regulatory action will likely have little impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property

This regulatory action will likely have no impact on the use or value of private property.

Small Businesses: Costs and Other Effects

No small businesses are likely to be affected by this proposed regulation.

Small Businesses: Alternative Method that Minimizes Adverse Impact

No small businesses are likely to be affected by this proposed regulation.

Real Estate Development Costs

This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate

General: 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 and Executive Order Number 17 (2014). Section 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:

- the projected number of businesses or other entities to whom the proposed 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.

Small Businesses: If the proposed regulation will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- 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,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 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 (JCAR) is notified at the time the proposed regulation is submitted to the *Virginia Register of Regulations* for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

AMH

Town Hall ID: Action # 3822/Stage # 6501