



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

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

**Department of Social Services**

July 7, 2009

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### **Summary of the Proposed Regulation**

The State Board of Social Services (Board) proposes to repeal eight regulations which now govern parts of the adoption process as well the disposition of children in foster care and children who are at risk of becoming part of the foster care system. One comprehensive regulation that mandates the shape and scope of permanency services in Virginia will replace those seven that are to be repealed.

The Board proposes to require that:

1. Local Departments of Social Services (LDSS) have a plan for visitation between foster children and their parents and siblings unless such visitation is not in the best interests of the child,
2. The case of each child in foster care be subject to judicial review at set intervals,
3. LDSS include all affected parties in the service planning process and notify these parties of all judicial and administrative hearings so that they may participate if they wish,<sup>1</sup>
4. LDSS have monthly face-to-face contact with children in foster care,
5. LDSS have face-to-face contact with the parents or prior guardians to whom children in the foster care system are expected to be returned,

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<sup>1</sup> Affected parties include parents or prior guardians, foster parents and, when appropriate, children who are the subject of the service plan.

6. LDSS have contact with all foster care providers as specified (quarterly visits are currently specified) in the State Department of Social Services' (DSS) Resource, Foster and Adoptive Family Home Approval Standards (22 VAC 40-211),
7. New social workers and supervisory staff participate in initial training and ongoing yearly training and
8. Only children 14 years or older be considered eligible for permanent foster care.

The Board also proposes to prohibit local social services personnel from serving as foster, adoptive or resource parents for children in the custody of the locality they work for even if the child and the local worker are relatives.

In addition to bringing Virginia into greater compliance with the requirements of Title IV-E and the Adoption and Safe families Act (ASFA), the proposed regulation contains requirements that are already DSS policy (DSS Foster Care Policy Manual Volume VII, Section III, Chapter B), but which has not yet been put into regulatory code. These portions of the proposed regulation do not represent a change in DSS practices.

## **Result of Analysis**

The benefits exceed the costs for one proposed regulatory change. The costs likely exceed the benefits for two proposed regulatory changes. There is insufficient data to decide whether benefits exceed costs for all other proposed changes. Detailed analysis can be found in the next section.

## **Estimated Economic Impact**

Most of the provisions of 22 VAC 40-201 do not represent a substantive change in how the foster care system in Virginia operates. As noted above, much of the proposed regulation is a restatement of current DSS policy. There are however substantial costs, mostly labor costs, attached to the proposed regulation provisions that concern visitation between foster children and family members from whom they have been separated, between these children and their case social workers, and between social workers and parents to whom children in foster care will be returned. There will also be costs associated with social worker and supervisor training.

Current regulation contains no specific language obligating DSS to maintain ties between foster care children and their siblings and parents or former guardians; at this point, various

localities have different policies for, and place varying importance on, this type of visitation. In 2003, the US Department of Health and Human Services Children's Bureau (HHS) conducted a review of child and family services in Virginia. Visitation between foster children and their families is one of the areas in which Virginia's foster care system "did not achieve substantial conformity" with the ASFA mandates. In order to avoid threatened monetary penalties, DSS must now bring regulation and practice into compliance with ASFA, which requires that states facilitate this visitation so that families can be more easily reunited at the end of the foster care process.

DSS estimates that implementation of this portion of the proposed regulation will require that LDSS hire the equivalent of 27.8 full time social workers (\$59,778 per worker per year<sup>2</sup>) in order to implement visitation with parents to whom foster children will likely be returned. This change will likely yield benefits for children in foster care as this visitation will allow LDSS to communicate goals for this parents and assess how well they are meeting those goals. This will likely allow reunification plans to move forward more quickly.

Additionally, DSS estimates that approximately 65 full time social workers are needed to implement mandated monthly face-to-face visitation between social workers and children in foster care placement. This change in policy is identical to, and mandated by, HHS policy. DSS, and HHS, believes that many situations, like poor placement fit, that might prove harmful to foster children can be caught and fixed more quickly if social workers have face-to-face contact more frequently. Although this portion of the proposed regulation represents a large shift in DSS policy since currently only quarterly visits are required, many LDSS have moved toward monthly visits already in anticipation of this change.

DSS does not currently have funding to cover the increased visitation mandated by the proposed regulation and, so, would have to meet new regulatory requirements using their current staff. This provision, if promulgated without funding, may have a negative effect on social worker retention rates which will, in turn, have a negative economic impact on the

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<sup>2</sup> This figure includes salary, retirement benefits, FICA, insurance, travel expenses, supplies, telephone costs, equipment costs and the one time expenses associated with setting up an office. The same expenses are included in the per year cost for each new case aide and supervisor. Other accounting methods which recognize, for instance, that office space can be shared would likely yield lower per-worker costs.

Commonwealth as additional funds will be needed for recruiting and hiring replacement workers.

Although DSS anticipates that they already have the resources (training materials, staff to conduct training, etc) to cover new worker and annual in-service training that will be required by these proposed regulations, there is a cost in using these resources for this purpose rather than using them toward some other end. DSS reports that this newly required training will bring regulation and practice in this area into conformity with Federal standards in order to avoid substantial monetary penalties. While the costs (mainly opportunity costs for resources used) of this training are in practical terms, unavoidable, they are mitigated, and likely outweighed, by expected decreases in staff turnover. Social workers who are trained before they are assigned cases, and who receive ongoing training, are less likely to become frustrated because they are unprepared to handle the stress of their job. They may, as a consequence, stay in their position longer. If this is the case, DSS will realize savings in the search and hiring costs for new employees. In addition, this portion of the proposed regulation will have non-monetary benefits in that well trained social workers are more likely to make good decisions for the children who they are evaluating or who are already in the care of DSS.

In order to facilitate the training and visitation mandated by the proposed regulation, LDSS will need to hire the equivalent of 15.5 full time supervisors (\$70,919 per supervisor per year) to maintain a supervisor to social worker ratio of 1 to 6. In addition, LDSS will need to hire the equivalent of 6.6 full time case aides (\$51,672 per aide per year) to maintain an aide to social worker ratio of 1 to 14.

DSS estimates that the full (financial) cost for implementing the proposed regulation as it is now written is \$8,198,379 for FY 2010. Of this total, localities will be responsible for \$1,270,749; the Commonwealth's portion will be \$5,738,865 and federal funds will cover \$1,188,765. For FY 2011, DSS reports that these proposed regulations will cost \$7,526,156: \$1,166,554 in local funding, \$5,268,309 in state funding and \$1,091,293 in federal funding.

Other explicit costs generated by implementation of the proposed regulation, cost for printing training materials and any cost attached to gathering specific documentation that must be presented in removal hearings are two examples, are estimated by DSS to be minimal and already covered by pre-existing budgetary allowances. These represent costs to opportunity in

that funds used for these things cannot be used for something else, but DSS does not require an increase in their budget to cover them.

In addition to the changes in these proposed regulations that have financial costs attached to them, the Board is proposing several changes to policy that will likely adversely impact some of the children to whom the changes will apply. Current DSS policy allows children 12 years old and older to have a permanency goal of permanent foster care. The Board proposes to change this requirement, so that only children 14 years old or older will be placed in permanent foster care, and to move this requirement from DSS policy, where it served as guidance for LDSS, to Administrative Code. DSS reports that this language is being proposed as part of these replacement regulations to ensure that every child that can be reunified with his or her family, or adopted, has that happen. Having this rule as part of a law that must be implemented, however, will likely adversely affect the chance that sibling groups, that may be as difficult as teenagers to find an adoptive home for, would be able to stay together. While the goal of adoption for every eligible child is an admirable one, siblings groups may not have their lives improved by being separated because adoption is viewed as always preferable to permanent foster care. Outcomes for children in this situation would likely be improved if this language remains in guidance but does not become a hard and fast rule in the Administrative Code.

The Board also proposes to add language to these regulations that prohibits LDSS personnel from serving as foster, adoptive or resource parent for any child, even a relative, in the custody of the locality for whom they work. If child relative is brought into foster care, LDSS personnel may be certified as a foster, resource or adoptive parent in a locality other than the one he or she works for or the custody of the child can be transferred to another locality and that locality can consider placing the child with the relative who works for some other LDSS. DSS reports that this rule is not a change in policy and is being promulgated to forewarn the possibility that individuals who work for LDSS would use their influence or special knowledge to improperly influence the placement of children or the dispersal of reimbursement funds. DSS also reports that this rule is required by the State and Local Government Conflicts of Interest Act (§ 2.2-3109). While this is likely a sensible rule when dealing with most children, children who have a relative who works for a LDSS may be harmed by it. Affected children who might benefit from being placed in a home with a relative whom they know and love will likely have that placement delayed or denied by this rule. Outcomes for children in this situation would likely be

improved if an exception to this rule that allowed easier qualification for relative care were carved out in both administrative code and statute.

Other costs that may be attached to the proposed regulation are harder to judge. For instance, the provision that requires that social workers meet with the parents of children in foster care may be problematic since DSS can dictate practice for LDSS staff but cannot force unwilling parents to meet if that is not their inclination. The cost of this item in man hours could easily add up very quickly as LDSS staff may find that they are spending a good deal more time than anticipated trying to get parents to comply. This may serve as a source of frustration to social workers and may be a factor that increases DSS staff turnover. Additionally, DSS was subject to an audit of their compliance with ASFA. Many of the requirements of the proposed regulation are aimed at fixing the deficiencies that HHS found with Virginia's child and family services. Although there has been no exact dollar amount yet attached to non-compliance, Virginia will be subject to monetary penalties if they do not improve performance in implementing ASFA mandates.

## **Businesses and Entities Affected**

The proposed regulations will affect 169 private placement agencies and child residential institutions, as well as the slightly fewer than 7,000 children in foster care in Virginia.

## **Localities Particularly Affected**

All 120 local Departments of Social Services will be affected by these new regulations.

## **Projected Impact on Employment**

At least 93 new social workers may be hired to meet the visitation and training requirements of the proposed regulations. Additionally, approximately 22 new support and supervisory positions may be created.

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

The use and value of private property should not be affected by the proposed regulations.

## **Small Businesses: Costs and Other Effects**

Only public agencies and non-profit private placing agencies are likely to be affected by the proposed regulations.

## **Small Businesses: Alternative Method that Minimizes Adverse Impact**

Only public agencies and non-profit private placing agencies are likely to be affected by the proposed regulations.

## **Real Estate Development Costs**

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

## **Legal Mandate**

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.H 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. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

