Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes ☒ Not Needed ☐

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).

Virginia Department of Planning and Budget

Economic Impact Analysis

22 VAC 40-201 Permanency Services – Prevention, Foster Care, Adoption and Independent Living
Department of Social Services
Town Hall Action/Stage: 3962/6964
August 10, 2015

Summary of the Proposed Amendments to Regulation

The State Board of Social Services (Board) proposes to make several substantive changes, and many clarifying changes, to its permanency regulation. Substantively, the Board proposes to:

1) As required by state and federal law, allow independent living services to be extended to youths over the age of 18 who are being released from Department of Juvenile Justice (DJJ) custody, so long as those youths were in foster care before they were incarcerated; and remove the permanency goal of independent living except for juvenile refugees, youth leaving foster care who are at least 18 years old and or youths at least 18 years of age who are leaving Juvenile Correctional Center custody,
2) Limit when a foster child can be removed from kinship foster care without the consent of the relative foster parent,
3) Pursuant to 2014 legislative changes, allow the restoration of parental rights for the parents of older foster care children whose rights had been terminated,
4) Mandate that the state Department of Social Services negotiate adoption assistance subsidies,

5) Set the process by which named parties will decide which school district a foster child will attend school in and
6) Reduce the time frame for submitting a foster care plan to the courts and the time frame for the courts to approve that plan.

Result of Analysis

Benefits will likely outweigh costs for most proposed changes. For several proposed changes, there is insufficient information to ascertain whether benefits will outweigh costs.

Estimated Economic Impact

Most of the changes that the Board is proposing for this regulation either make explicit existing rules that local Departments of Social Services (LDSS) currently follow or modify language to eliminate confusion about what the rules are. For instance, LDSS staff are currently responsible for verifying that foster children placed through private placing agencies are in approved placements. The Board proposes to add language to this regulation that explicitly lays out LDSS responsibility on this matter but does not propose to change the parameters of responsibility for verifying home approval in any substantive way. Affected entities are very unlikely to incur extra costs on account of changes such as these, but will benefit from the increased clarity of the regulatory text.

Currently, this regulation allows a permanency goal of independent living even though federal law does not. The Board proposes to amend this regulation so that no children under the age of 18 except refugees are allowed this goal. The Board also proposes to conform this regulation to state law changes that allow independent living services to be extended to young adults who are being released from Department of Juvenile Justice (DJJ) custody so long as those young adults were in foster care before they were incarcerated. Board staff reports that LDSSs will likely incur some costs on account of extending independent living services to young adults leaving DJJ but that a member amendment to last year's budget allocated $19,000 to cover those costs. Removing independent living as a permanency goal for older teenagers will require DSS staff to continue trying to find a biological family member or an adoptive placement for those youths but may also limit the youth's ability to affect their own living arrangements. That is, older teens who may not want to form ties with biological family members that DSS may find or who may prefer to focus on living independently as part of their own life goals rather than being adopted may have their preferences minimized or ignored because LDSSs are now mandated to continue trying to place these teenagers in a home that meets the criteria for permanency goals.

Current regulation allows kinship foster care but does not give that foster care placement precedence over approved permanency goals, like adoption, that are theoretically considered to be more beneficial to the child in care. Because of a legislative change, the Board now proposes to specify that children who have been under the care of a relative in kinship foster care for six months continuously may not be removed from that placement without the consent of the relative caregiver unless a court orders removal. This change may benefit the children in such care as they will be allowed to stay in a placement that provides both safety and continuing family ties. Parents of children in foster care may not benefit, however from this proposed change as they would need either the consent of the family member who has care of their child or children or would need court intervention to be reunited if it takes longer than six months for them to complete all actions that a reunion is conditioned upon.

Current regulation does not have provision for parental rights to be restored once they are severed because reuniting the family is no longer a realistic goal for a child who has been taken into foster care. Pursuant to a 2014 change in state law, the Board proposes to allow restoration of parental rights of parents who have had their rights severed at least two years previous to the restoration petition and whose children are either over the age of 14, or are younger siblings of a child over the age of 14 who is the subject to a restoration petition if the child's permanency goal was not achieved or sustained. This change will benefit children who are not thriving in foster care and whose parents may have belatedly gotten their lives together enough to finally care for those children.

Until recently, LDSS staff had the responsibility for both placing children into adoptive homes and negotiating the size of adoption assistance subsidies with adoptive parents (and sometimes adoptive parents' lawyers). To minimize this conflict of interest, the Board has moved the responsibility of negotiating these subsidies using standardized criteria to the state Department of Social Services. Board staff reports that this change will likely save the state some money although the magnitude of cost savings is not yet known. Some adoptive parents who will negotiate subsidies in the future may not benefit from this change as their adoption subsidies will be lower under new rules than they would have been under local negotiation rules.

Current regulation requires LDSS staff to collaborate with local educational agencies to decide if a child entering foster care will stay in the school district their family lives in or be moved to the school district that contains their foster care home (if the two are different). The Board proposes going forward to require LDSSs to consult not only with the involved school divisions but also the child's prior custodians (likely their parent or parents), foster care providers and other involved adults before deciding where the child in foster care will go to school. This change may increase transportation costs incurred by LDSSs if more decisions are made that keep children in schools that do not provide bus service to those children's foster homes.

Currently, LDSSs have 60 days after a child is taken into foster care to submit a foster care plan to the court, and the court has 75 days after a child is taken into foster care to approve that plan (15 days beyond the LDSSs window). Pursuant to a 2013 legislative change, the Board now proposes to change these timelines so that LDSSs have 45 days to submit a foster care plan to the court and the court has only 15 days beyond that 45 day window to approve that plan. This change will benefit foster children as they will have a plan in place to guide their care at least 15 days sooner than they currently do. Board staff reports that LDSSs will not incur any additional costs for complying with these shortened timelines.

Businesses and Entities Affected

This proposed regulation will affect all LDSS, the children in their care or placed through them as well as the parents and other involved relatives.

Localities Particularly Affected

No localities will be particularly or affected by these regulatory changes..

Projected Impact on Employment

This proposed regulation will likely not affect employment in the Commonwealth.

Effects on the Use and Value of Private Property

This proposed regulation will likely not affect the use or value of private property in the Commonwealth.

Real Estate Development Costs

The proposed changes will likely not affect real estate development costs.

Small Businesses:

Definition

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."

Costs and Other Effects

No small businesses will incur costs on account of these proposed regulatory changes. All affected entities are either public governmental agencies or private individuals.

Alternative Method that Minimizes Adverse Impact

No small businesses will incur costs on account of these proposed regulatory changes. All affected entities are either public governmental agencies or private individuals.

Adverse Impacts:

Businesses:

The proposed changes are unlikely to adversely impact any business in the Commonwealth.

Localities:

LDSSs will likely incur some additional court related costs on account of with rule changes that allow restoration of parental rights for parents of foster kids at least 14 years old and rule changes that make it harder to remove children from a kinship foster care placement after six months. LDSSs may also incur additional costs for funding independent living services for youths over the age of 18 who were in foster care before being committed to DJJ and for additional transportation costs associated with transporting foster children to school.

Other Entities:

The proposed change to kinship foster care rules may adversely affect parents whose children are in long term kinship foster care as it may decrease the chance they will be reunited with their children if the relative the children live with objects. The proposed change that limits older teenage foster kids from having a permanency goal of independent living may decrease the control that those teenagers have over where, and with whom, they end up living.

Legal Mandates

General: The Department of Planning and Budget 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 Number 17 (2014). Code § 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: (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.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): 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 within the 45-day period.

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.

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