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[1] ☒ 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
Virginia Department of Social Services
Town Hall Action/Stage: 5092/8541
August 7, 2019

Summary of the Proposed Amendments to Regulation

The State Board of Social Services (Board) seeks to amend regulations pertaining to permanency for children in foster care (22 VAC 40-201) in order to implement the Kinship Guardianship Assistance Program (KinGAP). This program creates a channel for children in foster care, for whom neither reunification with parents nor adoption is deemed possible, to attain permanency with a relative by the time they turn eighteen. The proposed amendments define and detail the actions required of local departments of social services (LDSS) in order to comply with the Code of Virginia (§ 63.2-1305) and 42 U.S.C. § 673, which establish the Kinship Guardianship Assistance Program at the state and federal levels, respectively.

Background

The 2018 Acts of Assembly (Chapters 769 and 770) established KinGAP and the proposed regulation provides comprehensive technical direction for the program to be implemented in a consistent manner across the state by the LDSS. The Board proposes to add a section to the regulation that specifies the eligibility criteria for children and the actions required of LDSS and the child's relatives under KinGAP. The Board also proposes to amend definitions

[1] 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.

to add terms specific to KinGAP. The language used is nearly identical to the language in the Code, which went into effect July 1, 2018, and complies with title IV-E requirements as set forth in 42 U.S.C. § 673. The proposed language also clarifies the procedures followed by LDSS for filing petitions related to foster care court proceedings.

In summary, the proposed new KinGAP section makes the following stipulations, as in the Code:

1. Only children for whom reunification and adoption have been ruled out are eligible
2. LDSS caseworkers are to find a relative who can provide permanency.[2]
3. The relatives must first foster the child for a minimum of six consecutive months. During this period, the state retains legal custody, LDSS continues to provide caseworker support and oversight, and the relatives are entitled to foster care monthly maintenance payments.
4. After the six months, LDSS is to enter into a Kinship Guardianship Assistance Agreement with the relative (henceforth the kinship guardian) wherein both parties agree to a monthly assistance payment that will replace the foster care maintenance payment once the kinship guardian obtains legal custody and the child obtains permanency.
5. The kinship guardian is required to file for custody of the child. They are entitled to a reimbursement of non-recurring costs up to $2000.
6. The Agreement could also allow the child and/or guardian to continue to access services that may be necessary for the child's mental health or developmental needs.

The proposed regulations exceed the prescriptions of the Code in adding an annual review requirement, intended to reassess the kinship guardian's financial situation and amend the payment amount and agreement. Although the Code indicates that the Kinship Guardianship Assistance Payment and Agreement are to be reviewed and amended with the agreement of both parties, it does not specify a timeline or require this. By adding an annual review requirement,

[2] Permanency is defined as "establishing family connections and placement options for a child to provide a lifetime of commitment, continuity of care, a sense of belonging, and a legal and social status that go beyond a child's temporary foster care placements." This definition in 22VAC 40 predates the introduction of KinGAP.

the Board specifies a point of ongoing contact for the kinship guardian, while adding a nominal administrative burden on the LDSS caseworker.

Estimated Benefits and Costs

For the discussion of costs and benefits that follows, it is important to note that both federal and state laws explicitly state that the kinship guardianship assistance payments shall not exceed the foster care maintenance payment, either IV-E or state funded, that would have been paid if the child were to remain in foster care. Therefore, any costs or benefits that can be reasonably attributed to KinGAP directly are nominal in comparison to the overall costs and benefits of the foster care system.

The proposed amendments appear to directly benefit relatives who may not have been able to afford to take custody of the foster child, and can now take custody and receive assistance payments. It benefits older children in foster care by marginally increasing the likelihood that they will attain permanency with a relative before their eighteenth birthday. Ordinarily, taking legal custody would preclude relatives from receiving any further foster care maintenance payments and/or other services that the child may need. To the extent that losing these payments may have actually prevented relatives from taking custody of the child, KinGAP is beneficial in that it realigns incentives such that children are able to find permanency within their own extended families and communities.

The proposed amendments create direct program costs, which have been estimated (as part of the fiscal analysis for SB 636 and HB 1333 in the 2018 GA session) at roughly $83,475 for the first year, $139,125 in the second year and $166,950 per year thereafter. The total expenditure for KinGAP in SFY 2019 has been reported to be $29,535, which is significantly lower than the estimated cost for the first year of the program's implementation. However, implementation of the program may have been uneven across the state in the absence of the regulations currently under consideration.

The costs reported above represent those foster children whose relatives may have taken custody even if it meant losing the foster care maintenance payments, but now continue to receive KinGAP payments. The fiscal analysis makes a key assumption that only about 6 children a year will be on this margin, thereby imposing additional ongoing costs. The Board estimates that about 50 children a year will be KinGAP participants, but the vast majority of them do not create additional ongoing costs since the assistance payments are simply diverted from existing allocations of foster care maintenance payments.

Future participation in KinGAP and resulting expenditures are unlikely to exceed these estimates because the program is fairly narrow in its scope: the children who would be eligible for KinGAP would have been eligible for foster care maintenance anyway, and most potential relatives who meet all the requirements to be a foster parent were likely already fulfilling that role. The six-month fostering requirement places an important limit on the size of the KinGAP program, since relatives in low-income households may not have the resources or meet the criteria to be a foster parent.

In 2015, the Department of Social Services reported on the outcomes for children who "age out" of foster care, finding that they were significantly less likely to graduate high school, more likely to participate in SNAP, TANF, and Medicaid, and more likely to find themselves "unstably housed, potentially homeless, parenting children they cannot adequately support, and involved with the criminal justice system."[3] Foster children most at risk of these adverse outcomes may not have family members that would qualify for being foster parents. The same report also indicated that foster placement of children with relatives is limited by Virginia's extensive list of "barrier crimes." Future regulatory actions that either amend the list of barrier crimes, or otherwise explicitly ease the requirements for family members to be foster parents, could increase the size of the KinGAP program.

Finally, KinGAP could potentially create higher costs in the future if, for example, attaining permanency by age 18 increased participation in other public programs such as Fostering Futures, which extends foster care benefits up to age 21 for children engaged in education, training or employment. Relieving older foster children of the anxiety of having to survive independently once they turn 18 could plausibly enable them to pursue education,

[3] RD365 – Improving Outcomes for Older Youth In Foster Care: An Analysis of the Impact of Adoption and Independent Living Services on the Transition to Adulthood (2015)

training or employment, thereby increasing the overall costs of that program. This would also, of course, be beneficial for the older children.

Businesses and Other Entities Affected

No businesses are directly affected by this program. The proposed regulation would affect the 120 LDSS and the children in their custody.

Localities[4] Affected[5]

Based on preliminary fiscal analysis, local governments as a whole are estimated to face aggregate costs of $13,937 in FY 2019, $25,775 in FY 2020 and $27,874 in FY 2021 and thereafter. Because KinGAP is likely to remain a relatively small program, some localities may not be affected at all. Conversely, the localities where kinship guardians happen to reside would be disproportionately affected. The identity of these localities is not known.

Projected Impact on Employment

The proposed amendments do not appear to affect total employment.

Effects on the Use and Value of Private Property

The proposed amendments have no effect on the value of private property. Some homeowners may add a new member or two to their household. There would be no impact on real estate development costs.

Adverse Effect on Small Businesses[6]:

The proposed amendments do not appear to adversely affect small businesses.

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 14 (as amended, July 16, 2018). 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.

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[4] "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.

[5] § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

[6] 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."

Adverse impacts: 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 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.