



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

22 VAC 40-211 Adoptive Family Home Approval Standards
Department of Social Services
Town Hall Action/Stage: 5383/9280
October 4, 2021

Summary of the Proposed Amendments to Regulation

Pursuant to Chapter 336 of the 2019 Acts of Assembly, the State Board of Social Services (Board) proposes to add a section to 22 VAC 40-211 *Adoptive Family Home Approval Standards* that would establish foster parents' rights to timely information regarding their foster child prior to and during the child's placement, and if appropriate, after the child leaves foster care. The proposed new section would also establish a dispute resolution process, including an appeals process, for foster parents who allege the local social services board or licensed child placing agency (LCPA) to have violated their rights.

Background

The proposed new section 22 VAC 40-211-130 *Foster Parent Bill of Rights and Dispute Resolution Process* contains two parts. The first part contains a list of 13 requirements of local departments of social services (LDSS) regarding the information provided to foster parents, including the tone and timing of such communication, framed as a foster parent's "Bill of Rights." The second part establishes a dispute resolution process for foster parents who seek recourse for a violation of these rights.

Part A. Foster Parent Bill of Rights

The first part of the proposed new section would delineate foster parents' rights regarding collaboration, communication, access and transparency. In general, foster parents would have a right to be regarded as the primary caregiver of the child and part of the foster care team and to be treated accordingly. This would include allowing them to have input regarding the child's

permanency plan and to be able to communicate (to the extent permitted under federal and state law) with professionals who work directly with the child in foster care, including therapists, physicians, and teachers. Accordingly, the proposed amendments would reiterate that foster parents are afforded the same rights as outlined in the Foster Care Placement Agreement and the Code of Ethics and Mutual Responsibilities.¹

The Department of Social Services (DSS) reports that foster parents would routinely raise concerns regarding LDSS practices, particularly a lack of utilization or placement decisions. While foster families have always had the right to raise their concerns with the local department, there were no formal requirements with respect to who would respond or when a response could be expected. Further, foster parents could always share concerns with DSS and prior to the development of the Constituent Services Unit (CSU), such concerns were routinely handled by DSS staff. In 2018, DSS' Division of Family Services established the CSU to respond to matters raised by constituents, including foster parents. One of the proposed amendments would require that foster parents be provided with a method to contact the local board or LCPA for assistance 24 hours a day and seven days a week. DSS has indicated that they will establish a toll free number as a result of this regulation, which will be reserved for matters specific to foster families and will be received by the CSU's Resource Family Program consultant.

DSS reports that LDSS have always been directed to be transparent in sharing information regarding children in foster care with families providing care; however, they have not previously spelled out what information had to be shared. The foster parents' bill of rights is intended to remedy this by specifying the types of information to be shared and requiring that such information be shared in a timely manner. For example, foster parents would have a right to all background and medical records of the child prior to placement, all information relevant to the child's foster care services, and copies of all documents related to the foster parent, their family, and services provided to the foster home on an ongoing basis. In addition, foster parents would have a right to be notified of all court hearings, scheduled meetings, and decisions made by the court, local board, or LCPA concerning the child's foster care service, and changes to the

¹ See https://www.dss.virginia.gov/files/division/licensing/lcpa/intro_page/current_providers/forms/all_other/032-04-0029-02-eng.pdf for a copy of the current Foster Care Agreement. DSS has indicated that this document will be updated to include the Foster Parent Bill of Rights.

child's case plan or termination of the child's placement. Foster parents would also have a right to timely responses to requests for information regarding the child's progress after leaving foster care, if it is in the child's best interest.

Part B. Dispute Resolution Process

The second part of the proposed new section implements the statutory requirements created by Chapter 336 of the 2019 Acts of Assembly, which requires local boards and LCPAs to “implement and publicize a dispute resolution process through which a foster parent may contest an alleged violation of the regulations governing the collaboration, communication, access, and transparency between the local boards... (and LCPAs)...and foster parents.”²² Foster parents are directed to first attempt to resolve the dispute informally by contacting the family services specialist assigned to them and describing the conduct they deem a violation of the regulations. The family services specialist is required to respond with a proposed correction or resolution within five business days. If the foster parent and the family services specialist are unable to resolve the conflict informally, the foster parent may file a written complaint with the local board's foster care supervisor or assigned designee, who then has five business days to respond in writing, setting forth all findings regarding the alleged violation and any corrective action to be taken.

The legislation also provides for an appeals process if the foster parent disagrees with the findings or proposed corrective actions made by the foster care supervisor: the foster parent may file a written notice of appeal with the local director describing the alleged violation and including a copy of the foster care supervisor's written response. The local director shall hold a meeting between all parties within seven business days to determine whether the allegations made by the foster parent are valid and whether the recommendations made by the family services specialist and the foster care supervisor were appropriate. Following the meeting, the family services specialist shall produce a written summary of the meeting with the approval of the foster care supervisor. Finally, the local director is required to issue a formal copy of the findings to all parties and, if applicable, recommendations for corrective action. The legislation does not specify a time frame for the actions to be taken following the meeting.

²² See <https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0336+hil>.

The second part largely mirrors the requirements put forth by the legislation, summarized above, except that the board has added a requirement that foster parents advance the dispute within ten business days of receiving findings and recommendations from the preceding stage of the dispute resolution process. This ten-day window applies in three places: at the beginning of the process, requiring the foster parent to contact their assigned family services specialist within ten days of the conduct they deem to be a violation, after the foster parent hears from the family services specialist, and again after receiving written findings and/or recommendations from the local board's foster care supervisor or designee. DSS has clarified that email would constitute a written communication under this regulation. Because the legislation directed the Board to adopt regulations within 280 days, the proposed amendments have been implemented via emergency regulations effective January 4, 2021.³

Estimated Benefits and Costs

Currently, there are 4,078 children in foster care in Virginia, of which 72 percent are placed with foster families. (The rest are placed in congregate care facilities or group homes.) 38 percent (1,553) of children in foster care are placed in foster families approved by LCPAs, while 34 percent (1,383) are placed in foster families approved by LDSS. To the extent that the proposed changes serve to improve collaboration, communication, access, and transparency regarding a foster child's placement and care, the proposed amendments would ultimately benefit the children placed with foster families.

The proposed changes would benefit foster and adoptive parents by ensuring that their input and opinions are taken into consideration when determining appropriate services for children who are placed in their home. This would allow for a more individualized approach to the child's treatment plan. It would also increase the retention of approved homes by engaging foster and adoptive parents in healthy and mutually cooperative relationship, addressing issues that could possibly lead to families no longer wanting to foster, and engaging in early intervention for foster families who may be struggling with their role and responsibilities.

The proposed amendments could result in a marginally increased workload for LDSS and LCPAs by requiring greater communication with foster parents on their part. However, DSS reports that there have not been any reports of increased workload by LDSS or LCPAs. LDSS

³ See <https://townhall.virginia.gov/L/ViewStage.cfm?stageid=8756>.

have always been instructed to be transparent in sharing information regarding children in foster care with families providing care. The proposed amendments only serve to specify what information must be shared and the process to be followed when a dispute arises. The proposed changes would also ensure that LDSS and LCPAs are in compliance with statute.

Businesses and Other Entities Affected

There are currently 36 LCPAs, many of which operate out of multiple locations throughout the state. The DSS website reports 160 unique LCPA offices.⁴ There are 121 LDSS.⁵

Small Businesses⁶ Affected

The proposed amendment would affect LCPAs; it is unknown how many, if any, LCPAs are small businesses.

Localities⁷ Affected⁸

The proposed amendment would not affect local governments. LDSS, which are part of DSS, would be affected; LDSS serving a disproportionate number of foster children would be affected more. However, there is no information as to which localities have a disproportionate number of foster children and the extent to which those LDSS would be impacted relative to other LDSS.

Projected Impact on Employment

The proposed amendments do not significantly increase staff workloads and are thus unlikely to affect employment by DSS, LDSS, or by LCPAs.

Effects on the Use and Value of Private Property

The proposed amendments are unlikely to affect the use and value of private property. Real estate development costs are not affected.

Legal Mandates

⁴ See <https://www.dss.virginia.gov/facility/search/cpa.cgi>.

⁵ See <https://www.dss.virginia.gov/localagency/index.cgi>.

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.”

⁷ “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.

⁸ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

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.

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.