



Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-221
Regulation title	Additional Daily Supervision Rate Structure
Action title	Establish rate structuring for a component of foster care maintenance payments and standards for local departments providing additional daily supervision
Date this document prepared	October 14, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

This regulatory action establishes a structure for an enhanced maintenance payment for children who require increased supervision or support (additional daily supervision) because of identified needs, as is required by the Administration for Children and Families (ACF) to draw down Title IV-E funds to reimburse Virginia for these payments.

The regulation requires the use of an assessment instrument developed by the Department of Social Services (DSS), establishes how and when the instrument will be used, and sets forth the responsibilities of the agency making the payments and parents receiving payments. The regulation also establishes an enhanced maintenance payment process for emergency placements and a process for reviewing the results of the assessment process.

This regulatory action addresses only maintenance payments for the additional daily supervision needs of the child. It does not address the provision of services funded through the Comprehensive Services Act.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 63.2-217 of the Code of Virginia (Code) requires the State Board of Social Services (Board) to adopt regulations necessary or desirable to operate assistance programs in Virginia.

According to ACF, 42 U.S.C. 673 and policy announcement ACYF-CB-PA-01-01 require a statewide rate system in order for a state to draw down Title IV-E funds for foster care maintenance and adoption assistance. Failure to have a statewide rate system may result in the denial of federal funds.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

This regulatory action will require use of an approved DSS process to assess a child to determine the additional daily supervision component of the foster care maintenance payment. It will also establish comprehensive standards for local departments of social services (LDSS) to use when providing an additional daily supervision payment.

This regulation is necessary to ensure that Virginia meets federal requirements for seeking federal reimbursement by implementing a statewide rate structure for LDSS to use to determine the additional daily supervision component of the foster care maintenance payment. It will ensure that LDSS are consistent in determining the payment for additional daily supervision based on the assessed needs of the child.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)

New section 22 VAC 40-221-20 mandates that an assessment instrument developed by DSS be used to determine the need for additional daily supervision and the appropriate enhanced maintenance payment amount for any child placed in public or private treatment foster homes (TFC). LDSS shall use the assessment instrument for a child in a non-TFC agency approved provider home when the LDSS wants to provide an enhanced maintenance payment for additional daily supervision. The regulation requires the assessment instrument be used for all children in an adoptive placement when the initial adoptive

placement agreement is being negotiated. The rate derived from the completed assessment instrument provides information concerning what the child would have received in foster care and is used in negotiating the adoption assistance agreement.

New section 22 VAC 40-221-30 establishes the requirements for child placing agencies that provide an enhanced maintenance payment to a foster parent. These requirements include (1) providing child specific training if needed, (2) monthly visits with the foster parents, and (3) 24-hour on-call support.

New section 22 VAC 40-221-40 defines the requirements for foster parents receiving an enhanced maintenance payment, including (1) participating in determining training needs, (2) participating in the development of the child’s service plan, and (3) maintaining documentation of the child’s progress.

New section 22 VAC 40-221-50 provides for a pro-rated enhanced maintenance payment based on a \$1600 rate (1) when a child is placed on an emergency basis in a TFC placement, or (2) in a non-TFC placement where the LDSS intends to make an enhanced maintenance payment and there has not been enough time to administer the assessment instrument. This section requires that the rate assessment tool be administered within 30 days of the placement.

New section 22 VAC 40-221-60 addresses the review of the results of the rate assessment tool. The regulation allows a representative of the child five days to request a review. The LDSS director has 15 days to conduct an administrative review of the request and may concur with the original assessment or request a new administration of the tool.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

Currently there is no correlation between payments made to foster care parents for additional daily supervision beyond the basic maintenance payment amount and the actual needs of a child in foster care. This regulation benefits both children in foster care and the Commonwealth by ensuring that children’s needs are consistently assessed, foster parents are appropriately reimbursed, and the state is eligible to draw down federal Title IV-E funds for these payments.

This regulatory action may result in a reduction in the rate paid to some foster care parents and an increase for others, as the payment for additional daily supervision will be tied to the assessed needs of the child.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

Federal law and policy requires states to have in place a statewide rate structure system in order to seek reimbursement from Title IV-E for payments made for additional daily supervision. Each state has discretion in the design of the system.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities which would bear a disproportionate impact.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. The Board is seeking information on impacts on small businesses as defined in § 2.2-4007.1. Information may include: (1) projected reporting, recordkeeping and other administrative costs, (2) probable effect of the regulation on affected small businesses, and (3) a description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to Phyl Parrish, 7 North Eighth Street, Richmond Virginia, 23219, phone: 804-726-7926, fax: 804-726-7895, email: phyl.parrish@dss.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing will appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>DSS would save approximately \$375,000 in general fund the first year of implementation, approximately \$500,000 in SFY 2011. The general fund savings is expected to increase each year thereafter as new adoption contracts are written utilizing these guidelines. The upfront costs for training of the individuals to use the tool and the training of foster and adoptive</p>
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	parents have been incorporated in DSS's training plan.
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	Localities may incur minimal administrative costs in changing their process; however localities are also likely to realize CSA expenditure reductions as a percentage of ADS payments will be shifted to Title IV-E. We currently cannot estimate the level of CSA savings at this point.
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	Foster parents may see an increase or decrease to their current level of payment next year when the assessment instrument has been administered to TFC children who are still in foster care at that time. Licensed Child Placing agencies will be impacted.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means 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.	There are 60 to 70 Licensed Child Placing Agencies in Virginia of various sizes.
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	We have requested estimates of fiscal impacts from representatives of child placing agencies but have not received them at this time
Beneficial impact the regulation is designed to produce.	Payments for additional daily supervision will be tied to the actual identified needs of the child. This action establishes a rate structure which will allow for reimbursement of significant expenses through Title IV-E that are currently either CSA or General Fund expenditures.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There is no viable alternative. This regulatory action establishes a rate structure system for payments to foster parents for additional daily supervision that will be based on the identified needs of the child, satisfy federal requirements, and allow for federal reimbursement of additional daily supervision expenses.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

DSS worked with a committee composed of representatives of impacted entities in the development of this regulation. The committee strived to develop an additional daily supervision rate structure regulation that is not burdensome for LDSS and licensed child-placing agencies, meets federal requirements, protects the safety of children, and provides for input from foster and adoptive parents.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Greg Winge	Supports efforts to assess a child’s needs consistently statewide – but has concerns that payments made by TFC providers and LDSS for children with similar characteristics	<p>DSS received 98 comments during the public comment period. Of those responses, 31 simply stated they were opposed with no comments. The remaining 67 letters and emails were beyond the scope of the NOIRA and were almost exclusively from foster parents expressing beliefs that their payments were being cut. In addition, some commented on drafts of an assessment instrument they had been given.</p> <p>There is no plan to cut foster care payments. The basic maintenance payment rate is set by the General Assembly. This regulation provides for a process to determine an additional payment for daily supervision that is based on an assessment of the child’s needs. VDSS’ analysis indicates that some payments would go down and others would increase.</p> <p>The proposed regulation only addresses an enhanced maintenance payment for additional daily supervision – but any payments for ADS whether from a TFC provider or an LDSS would be based on the same assessment</p>

Brad Bryant	<p>should be at the same rate</p> <p>Recommended a revision of the instrument and the assessment schedule. Expressed concerns about rate reductions for foster parents who were successful in working with children resulting in lower scores on the assessment instrument.</p>	<p>process.</p> <p>While Mr. Bryant’s comments were beyond the scope of the NOIRA, he is a member of the workgroup and both the assessment instrument and the assessment schedule were modified during the development of the instrument and the regulation in response to the concerns raised by Mr. Bryant and other members of the workgroup.</p>
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Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action supports DSS’ and other child serving agencies’ goal to provide high-level, consistent care for children in the foster care system. By creating a structured payment system and developing standardized requirements for those providing additional daily supervision for these children, Virginia will be able to ensure greater placement stability for children in foster homes. Placement stability supports children’s ability to establish trust with their foster parents and is correlated with decreased time in foster care, and increased sense of self esteem and self-responsibility. Foster parents will be better trained to maintain the child in their home despite problems the child may exhibit and support children’s connection to their biological families and the goal of reunifying children in care with their biological family.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
10			This section contains the definitions of terms used in the

<p>20</p>	<p>Requires use of a DSS approved assessment tool</p> <p>LDSS is responsible for ensuring tool is completed with input from a child-specific team</p> <p>Identifies caseworker foster/adoptive parents and the individual trained to administer the tool as individuals who must be on team and identifies others who should be included</p> <p>Provides that LDSS staff or other child-serving agency individuals may be trained to administer the tool</p> <p>Provides that the assigned caseworker, foster or adoptive parents or private agency staff shall not administer the tool</p> <p>The tool shall be administered when a child is placed in a TFC home, if a LDSS chooses to make enhanced maintenance payments for a child in a non-TFC home and at the time an adoption assistance agreement is negotiated. A re-administration of the tool is not required if the adoption assistance agreement is signed within three months of a prior assessment.</p> <p>The tool shall be re-administered if a child</p>		<p>regulation</p> <p>To assure consistency statewide in the assessment process</p> <p>Individuals knowledgeable about the child will ensure accuracy of the assessment</p> <p>To assure key individuals with knowledge of the child are included in providing input into the assessment process</p> <p>Allows for individuals outside of LDSS staff to be trained to administer tool. This is particularly helpful for small agencies by widening the pool.</p> <p>To prevent the actual or perceived skewing of the results for financial benefit.</p> <p>Children placed in TFC homes generally require additional daily supervision and the foster parents receive specialized training to be considered treatment foster parents. If a LDSS chooses to make enhanced maintenance payments in a non-TFC home, an assessment using the approved rate assessment instrument is required. These requirements establish consistency in payments and allow for reimbursement using Title IV-E funds when appropriate.</p> <p>The tool must be administered at the time an adoption assistance agreement is negotiated to establish the amount the child would have received in foster care.</p> <p>This provision provides the foster parents the opportunity to have</p>
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	<p>moves to a TFC home in a different TFC agency, or when requested and there is evidence of significant behavioral, emotional or medical changes and two or more weeks of additional support have become necessary to maintain the child in the home. Once requested, it must be administered within 14 calendar days If a need for an increase is indicated, it is retroactive to date of request.</p> <p>The tool shall be administered no more often than quarterly unless the previous criteria apply – but must be administered at least once a year.</p> <p>The individual administering the uniform rate assessment tool shall consider the input from all sources, make final decision based on evidence presented, issue a final score within five business days of the meeting and share a copy of the scored tool with the foster parent and review it with them if requested.</p>		<p>the tool administered and receive a higher payment when there are significant changes in the child’s supervision needs. It also ensures the process happens quickly and the increase in funds goes back to the date of the foster parents’ request. The requirement for two weeks of increased supervision is to prevent frequent requests for re-administration of the tool in response to occasional behavior problems.</p> <p>These provisions attempt to ensure the child’s needs are appropriately assessed while also considering the administrative cost to agencies of frequent assessments.</p> <p>The intent of these provisions are to set out the responsibilities of the individual administering the assessment tool, ensure they consider all input and ensure a prompt issuance of information. It also ensures that the foster parents may receive a copy and understand the results of the assessment.</p>
<p>30</p>	<p>The child placing agency that approved the home shall have monthly visits with the foster parents.</p> <p>Monthly visits with foster parents may be contracted.</p> <p>An appointed case-worker is on-call and available 24 hours daily and supervisory consultation to the case worker shall be available 24 hours daily.</p> <p>The child placing agency shall monitor contractor’s performance.</p>		<p>These provisions are intended to assure the foster parents have the support necessary to provide needed supervision for the child and to maintain the placement. Contracting services is allowed to reduce the burden on agency resources.</p> <p>This requirement supports sub recipient monitoring required by DSS and ensures the child placing agency stays involved</p>

	<p>Additional training is provided based on the child's needs and input from the foster parent about their own needs.</p> <p>The foster care service plan for a child receiving payments for additional daily supervision shall include measurable goals, objectives and strategies for the foster parent and the agency, provisions for training for the foster parents, provisions for services to prevent disruptions in the placement and a description of the method developed by the agency and foster parent to document the child's progress.</p> <p>This section does not apply once a final order of adoption has been issued.</p>		<p>and aware of issues that may arise with the child.</p> <p>This provision supports the foster parent having the necessary skills to provide needed care for the specific child.</p> <p>A child for whom payments for additional daily supervision are received has been documented to have more needs than a child receiving regular foster care services. Having the additional supervision needs and requirements documented in the service plan reinforces the provision by the agency and acceptance by the foster parents of the requirements associated with receiving the additional payment.</p> <p>Adoptive families do not have service plans and are not before the court once an adoption is final. The assessment tool is used in helping to determine the amount a child would have received in foster care when negotiating the adoption assistance agreement</p>
40	<p>Foster parents receiving a payment for additional daily supervision shall: work with the child placing agency to identify needed training and then participate in training; participate in development and implementation of the service plan; agree to accept services to prevent disruption; and, monitor and document the child's progress in an agreed upon manner.</p>		<p>This section sets out the requirements for foster parents who receive a payment for additional daily supervision. It is expected that the efforts required for a child for whom these payments are made go beyond those required in a regular foster home and that these requirements, while similar to expectations for all foster parents, may be greater for these homes.</p>
50	<p>Enhanced maintenance payments for the initial emergency placement of a child shall be based on a per diem not to exceed \$1600 per month.</p>		<p>Children are sometimes placed in a home when an agency is not able to provide the foster parents with much information about the child. In addition, the early weeks of a placement are very</p>

	<p>The State Board must approve changes in the amount.</p> <p>Payment of this rate includes payment for the day the assessment instrument is administered.</p> <p>The uniform assessment tool shall be administered within 30 calendar days of the initial emergency placement of a child.</p>		<p>busy with foster parents trying to address the child's medical and educational requirements. At the current time \$1600 is the third quartile amount for a monthly payment for additional daily supervision.</p> <p>These provisions are intended to clarify that the emergency payment rate is paid through the day the assessment tool is administered and that the assessment process must occur within 30 business days of the placement. This is to ensure the correct payment, based on the child's needs is determined in a timely manner.</p>
<p>60</p>	<p>The foster parent or other representative of the child may request a review of the results of the assessment tool by the director of the agency which has custody if they feel the tool did not correctly identify the needs of the child.</p> <p>The director may not adjust the rate but may request a new assessment.</p> <p>The foster parent has five days to request a review.</p> <p>The LDSS has 15 business days to review the request and may concur with the original decision or may request a new administration of the tool.</p> <p>The re-administration may occur by phone or video conferencing.</p> <p>Once a decision is made to re-administer the tool, it must happen within 10 business days.</p>		<p>The foster parent may feel that certain information was not heard or that someone was not present who may have had additional information that would have resulted in a different rate. This provision allows the director to request the assessment be done over. The director cannot change the rate.</p> <p>These provisions are intended to ensure prompt review and re-administration if required and to ensure that if the new rate is higher, it is retroactive to the date of the foster parent's request.</p>

	If the re-administration of the tool indicates a higher payment rate, that rate shall be retroactive to the date of the foster parent's request.		
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Enter any other statement here