

***A Report on the Analysis of the Impact of the  
Final Interagency Guidelines on Foster Care Services for  
Specific “Children in Need of Services”***

***Prepared by the  
Office of Comprehensive Services for the  
State Executive Council***

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***Comprehensive Services Act for at-Risk  
Youth and their Families***

# **Fiscal Impact of Final Interagency Guidelines on Foster Care Services for Specific Children in Need of Services (CHINS)**

## **Study Mandate**

The Appropriations Act Item Chapter 879, Item 283, M, requires:

*The State Executive Council (SEC) shall conduct an analysis of the impact of the Final Interagency Guidelines on Foster Care Services for Specific “Children in Need of Services”, funded through the Comprehensive Services Act (CSA), effective December 3, 2007, to assess the fiscal impact on the state and localities of serving these additional children through CSA. As part of the analysis, the SEC shall report on the number of additional children served through the guidelines, the types of services provided to children served, how these children were referred for services under the guidelines and whether these children would have received services through CSA prior to the adoption of these new guidelines. The Chair of the SEC shall report this information to the Governor and Chairmen of the House Appropriations and Senate Finance Committees by December 1, 2008.*

*The Interagency Guidelines on the Provision of Foster Care Services to Specific Children in Need of Services were developed in response to an opinion regarding custody relinquishment rendered by the Virginia Office of the Attorney General in December 2006. A copy of the opinion is included with this report as Attachment A.*

Custody relinquishment refers to the practice of requiring parents to surrender legal custody of a child with serious emotional disturbances in order to receive mental health services that the family cannot afford on its own. Typically, the child is placed by the Court in the custody of the local Department for Social Services (LDSS). The child is then eligible for services as a foster child. The Attorney General’s opinion denounced custody relinquishment and requires that no family in Virginia ever have to face making such a decision.

## *Background*

### *Statutory Requirements*

To understand the need for the guidelines, it is important to examine the statutory complexity of providing services to this population of children and families. The Code of Virginia through the Comprehensive Services Act for at-Risk Youth and their Families provides funding for foster care services, including both the prevention of foster care and the provision of foster care placement for children (§2.2-5211.B.3). The definition of “foster care services” in Code (§63.2-905) requires that the broad range of community based services, including mental health counseling and treatment, be provided to two groups of children, those who are either:

- identified by Code as abused/neglected; or
- determined to be a child in need of services (CHINS).

Children in either of these two groups must be eligible for services in one of the following three situations:

- services to prevent placement in foster care,
- services through an agreement between the parent and an agency designated by the Community Policy and Management Team (CPMT), where the parent retains legal custody; or is
- receiving services as a child in the custody of the local DSS or a licensed child placing agency. (§63.2-905)

The Code of Virginia considers funding for all three of these categories to be “sum-sufficient”, i.e., funding must be allocated to meet the need under the Comprehensive Services Act. (§2.2-5211.C) The term “mandated” is often used in CSA popular language to describe the sum-sufficient categories.

Children with severe mental health needs may be eligible for CSA funding if determined to be “in need of services” and in need of either foster care prevention services which can be provided in the community to prevent placement of the child, or through the second category above, placement in a residential program through an agreement between the parent and the agency designated by the CPMT where the parent retains legal custody.

#### *Determination of CHINS*

The Attorney General’s opinion addressed the mechanism by which a child is determined to be in need of services. Traditionally, the law had been interpreted that only the Court could make such a finding. The opinion diverged from that interpretation and stated that the Family Assessment and Planning Team (FAPT) in each locality could determine a child’s eligibility as a “child in need of services”, consequently making him or her eligible for CSA funding.

#### *Non-custodial Agreements*

An earlier attempt to address custody relinquishment had been undertaken by the General Assembly with legislation that allowed the use of parental agreements “between an agency designated by the community policy and management team and a parent, where the parent retains legal custody.” The statute establishing these agreements was permissive, rather than mandatory, and allowed localities the option of not using these types of agreements.

These agreements, which came to be known as “non-custodial foster care agreements”, were used in many Virginia localities to avoid custody relinquishment, but were problematic in their own right. Typically, when used, local departments of social services were the agency designated by the CPMT and were required by the federal government to treat these families as foster care cases, with court review and permanency planning. Families complained of the stigma of involvement with DSS and the courts and wondered why they had to go to court to get mental health treatment for their child.

JLARC in their “Follow-up Report: Custody Relinquishment and the Comprehensive Services Act (dated March 2007) noted that approximately 1/3 of localities did not offer non-custodial agreements. Of those who did offer non-custodial agreements, approximately 1/3 placed limits or restrictions on the number or costs of non-custodials provided. Consequently, on occasion custody relinquishment remained a possibility. It should be recognized that often local governments did not turn away these children and families, but sought funding through other sources, such as “non-mandated” CSA funding or DSS Family Preservation funds to provide services.

#### *Fiscal Impact Projections*

The Joint Legislative and Audit Review Commission was asked by the Joint Commission on the Comprehensive Services Act to analyze the fiscal impact of the AG’s opinion. This preliminary analysis was published in March 2007 and anticipated an additional 225 children would likely be served at an approximate cost of \$1.5 million a year. A later analysis by JLARC presented to the Joint Commission on Health Care Behavioral Health Care Subcommittee in June 2007 significantly increased this projection to 753 children at an anticipated cost of \$21.2 million, of which \$13.4 million would be borne by the state with the remaining \$7.8 provided by the local governments.

#### *Development of the Guidelines*

A group of approximately 40 stakeholder representatives was convened by the Office of Comprehensive Services and began meeting in early April 2007. The stakeholder group further developed the guidelines based on examination of concerns and public comment. Public comment was received by the Office of Comprehensive Services during the time frame of May 18-July 20, 2007. Part of this public comment noted the need for a standardized eligibility checklist for FAPTs to use in determining CHINS eligibility as well as a standard template for parental agreements. The stakeholder group created two subgroups which developed each of these documents for distribution with the final guidelines. The SEC authorized the guidelines on October 2, 2007 but permitted an additional thirty days of comment. The final guidelines became effective December 3, 2007. The guidelines are included with this document as Attachment B.

However, language in the Code of Virginia still required that service plans for children served “through an agreement between the local board or the public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians” (§63.2-905) be reviewed by the Court within sixty days. (§16.1-281) Although parents did not have to seek the intervention of the Court now to initiate services per the Attorney General’s opinion, they still faced court involvement through the periodic review of the treatment plan. This statutory requirement also led to the practical difficulty of submitting a service plan to the Court for a child not known to the Court via a petition, and created an obstacle for localities in implementing parental agreements.

House Bill 1489, as enacted by the 2008 General Assembly, revised the Code (§16.1-281, §16.1-282 and §16.1-282.1) to remove the requirements of submission of the service plan to the Court and ongoing periodic Court reviews for *agencies other than DSS* who are

providing case management services. Agreements between agencies other than DSS and parents where the parent retains legal custody are known as “parental agreements.” If DSS is case managing, the case continues to be referred to as a “non-custodial foster care agreement” and all federal foster care requirements, including court review, apply.

Numbers reflected below are for the fourth quarter (year end summary) of the CSA data set within the time frame ending June 30, 2008. Consequently these numbers do not capture the number of parental agreements which have been entered into since the statutory change took effective July 1, 2008. The statutory change may have a yet unknown effect on increasing the number of parental agreements as it is now easier for agencies other than DSS to enter into these agreements.

The CSA data set was revised during the past fiscal year to capture the number of parental agreements as well as the number of foster care non-custodial agreements. Additional revisions to the CSA data set in FY 2009 will provide more detailed information about children served through these agreements.

**Comparison of Costs and Children Served between FY 2007 and FY 2008**

A small group of children and families is served through non-custodial agreements where a child is placed outside of the home into a therapeutic or treatment foster home. In FY 2007, there were 12 such agreements. In FY 2008, there were 19. It is unknown if any of the 19 in FY 2008 are the result of parental agreements as opposed to non-custodials as the data set does not separate this limited number of children.

<b>Type of Agreement</b>	<b># of children</b>	<b>Average Cost per child</b>
TFC Non-custodial 2007	12 children	\$31, 558
TFC Non-custodial 2008	19 children	\$31, 730

*Residential Care*

In FY 2007, 395 children were placed outside of the home for residential treatment through non-custodial agreements between a parent and the local DSS. In FY 2008, the number of non-custodials (case managed by DSS) dropped to 281 with an additional new 95 parental agreements (case managed by agencies other than DSS). Consequently, the overall number of agreements between a parent and an agency designated by the CPMT, where the parent retains legal custody, has dropped from 395 to 376, a difference of 19 less in 2008 than 2007.

<b>Type of agreement</b>	<b># of children</b>	<b>Average cost per child</b>
RFC-Non Custodial 2007	395	\$26, 402
RFC-Non Custodial 2008	281	\$30, 466
RFC-Parental Agreement 2008	95	\$35,066

It appears that approximately the same number of children is being placed in out of home residential care with parents retaining custody in both 2007 and 2008, with case management of a significant portion shifting to other agencies in 2008.

The average cost of parental agreements is higher than that of non-custodials in 2008 at \$35,066 for cases managed by agencies other than DSS and \$30,466 for cases managed by the local DSS. Local departments for social services are able to draw down Title IV-E reimbursement and refer parents to the Division of Child Support Enforcement for children placed through non-custodial agreements. Other agencies do not have the option to collect reimbursement from these other funding sources, which may account for the differential in average cost between non-custodials and parental agreements.

A look at the total cost of out of home placements through non-custodial and parental agreements reflects the same shifting of costs.

<b>Type of Agreement</b>	<b># of children</b>	<b>Total Cost</b>
RFC non-custodial in 2007	395	\$10, 428,569
RFC non-custodial in 2008	281	\$8,560,919
RFC parental agreement in 2008	95	\$3,331,279

The cost of the ninety five parental agreements has been \$3,331, 279 for this first year of implementation of the guidelines. However, a review of the total cost of children placed outside of the home through non-custodials in 2007 (395) compared to a combination of the total costs of parental agreements and non-custodials in 2008, indicates an increase of only \$1,463, 629.

Non-custodials 2008	\$8,560,919
Parental agreements 2008	<u>+ 3,331, 279</u>
Total for 2008	= \$11,892,198
Total Non-custodials 2007	<u>- 10,428,569</u>
Difference between '07 and '08	\$1,463,629

*Provision of foster care prevention services in the community*

Children may be determined CHINS by the FAPT and receive residential treatment as discussed above through either a non-custodial agreement with DSS or a parental agreement with another CPMT-designated agency. However, a FAPT may also determine a child to be in need of services and recommend the provision of community-based foster care prevention services to maintain the child in the home. It is unknown if these children, in the past, would have received services through a CHINS determination by the Court.

The CSA data set collects the number of children who have receive community based interventions. In FY 2007, 7,594 children received 9,755 services in this category. Additional children would be expected to be added to this category in 2008 as FAPT-determined CHINS. However, the number drops to 7,162 children receiving 9,433 services. The average expenditure per *child* rises from \$4,000 in 2007 to \$4,760 children in 2008. The average expenditure per *service* rose from \$3,114 in 2007 to \$3,614 in 2008.

<b>Year</b>	<b># of Children</b>	<b># of Services</b>	<b>Avg Cost per Child</b>
FY 2007	7,594 children	9,744 services	\$4,000
FY 2008	7,162 children	9,433 services	\$4,760
Difference	-432	- 311	+ 760

Of significance then is that the number of children receiving community based services has declined, as well as the actual number of community based interventions that were provided.

Overall costs have risen for community based interventions from \$30,375, 216 (net) in 2007 to \$34,088,059 (projected) or an increase of \$3,712,843. It is impossible to know if this increase in costs is related to children receiving community based services through the new FAPT- determined CHINS foster care prevention category who otherwise would not have received mandated services. However, it seems unlikely as both the number of children and the number of services received declined from 2007 to 2008.

Prior to FY 2009, the CSA data set did not allow for the identification of how these children were referred for services. The 2009 data set has been revised to include new mandate types which capture information for the CHINS parental agreement and CHINS prevention of foster care categories so this information will be available in the future.

*Conclusion*

Overall, there has not been a significant fiscal impact yet realized as a result of the implementation of the “Final Interagency Guidelines on Foster Care Services for Specific Children in Need of Services.” However, the effect of the statutory change of July 1, 2008 is not yet clear on the number of parental agreements. Past experience by OCS indicates that policy changes require an 18-24 month window to realize the full impact of the change.