COMMONWEALTH of VIRGINIA
DEPARTMENT OF SOCIAL SERVICES
Office of the Commissioner

S. Duke Storen
Commissioner

October 1, 2020

MEMORANDUM

TO: The Honorable Ralph S. Northam
Governor of Virginia

Members, Virginia General Assembly

FROM: S. Duke Storen

SUBJECT: Annual Report on the 2019 Foster Care Omnibus Legislation

The attached report is submitted pursuant to Chapter 446 of the 2019 Acts of Assembly regarding implementation of the Foster Care Omnibus bill. Please contact me if you have questions. Thank you.

SDS:kc
Attachment

Report on Chapter 446 of the 2019 Acts of Assembly
Foster Care Omnibus Bill
November 30, 2020

Background and Report Mandate

Chapter 446 of the 2019 Acts of Assembly (Foster Care Omnibus Bill) made numerous changes to the laws governing the provision of foster care services in Virginia. The second enactment clause directs the Commissioner of Social Services to establish, within the Virginia Department of Social Services (VDSS), a Director of Foster Care Health and Safety. The statute requires the Director of Foster Care Health and Safety to (i) identify local boards of social services (local boards) that fail to provide foster care services in a manner that complies with applicable laws and regulations and ensures the health, safety, and well-being of all children in the supervision and control of the local board; (ii) ensure that local boards remedy such failures, including those related to caseworker visits, safe and appropriate placement settings, and the provision of physical, mental, and behavioral health screenings and services; (iii) ensure that reports of abuse, neglect, mistreatment, and deaths of children in foster care are properly investigated; (iv) manage the process through which VDSS reviews children's residential facility placements for medical necessity; and (v) track health outcomes of children in foster care.

Furthermore, the second enactment clause requires, on or before November 30th of each year, the Director of Foster Care Health and Safety to report to the Governor and General Assembly on the implementation and effectiveness of such objectives and any other issues relevant to the health, safety and well-being of children in foster care.

Status of hiring a Director of Foster Care Health and Safety

The 2018 Joint Legislative Audit Review Commission (JLARC) report on improving foster care recommended this position be similar to medical director positions created in New Jersey, Maryland, and Tennessee. In those states, the medical director must be a licensed physician with experience providing medical care to children and be knowledgeable about the unique health needs of children in foster care.

VDSS developed a job description that specifies that this position will be responsible for identifying local departments of social services (LDSS) that fail to provide foster care services in a manner that complies with applicable laws and regulations and that ensure the well-being, health, and safety of all children in foster care. Among other responsibilities, the director will ensure that LDSS remedy any failures in practice (e.g., conducting monthly caseworker visits, the provision of physical, mental, and behavioral health screenings and services to children, and oversight of psychotropic medication use, etc.) and track health outcomes for children in care.

VDSS established the following minimum qualifications for the position:
1) Licensed physician (MD or DO degree) in good standing in the state of Virginia;
2) Experience providing medical care to children;
3) Board-certified through the American Board of Medical Specialties;
4) Knowledge of unique health care and developmental needs of children in foster care and the application of standardized medical necessity criteria in medical decision making;
5) Skills to analyze data and report trends; and
6) Proficiency in written and verbal communications.

The Foster Care Omnibus Bill went into effect on July 1, 2019. VDSS established an approved Employee Work Profile (EWP) on July 9, 2019. The position was posted for recruitment on July 12, 2019. After several months during which no applications for the position were received, VDSS made an adjustment to increase the potential starting salary to the maximum amount funded by the budget

allocation. VDSS continued to advertise and recruit for this position with no success. VDSS was in the process of exploring the possibility of modifying the job description to allow for a candidate to, at least begin in the position on a part time rather than full time basis, when the Governor declared a State of Emergency and a hiring freeze was put into place. The hiring freeze has subsequently been lifted. The agency is in the process of exploring options to effectively fill this position, including the possibility of contracting for services.

Regional Office Staffing

The Foster Care Omnibus Bill established two additional regional consultant positions in each of the five regional offices. These positions were aimed at permitting VDSS to significantly increase the level of technical assistance and ongoing review of case work at the LDSS level. Since July 2019, six of the new positions have been filled. VDSS continued to advertise and recruit for the four vacant positions up until the COVID-19 pandemic began in March 2020 and the subsequent hiring freeze was instituted. Those four positions remain vacant due to the hiring freeze. As new consultants were hired, VDSS focused on restructuring the current regional consultant positions, so that eventually there will be three permanency consultants and a diligent recruitment consultant in each of the five regions. The five diligent recruitment consultants report to one diligent recruitment program manager position, also established through the Foster Care Omnibus Bill. The five regional diligent recruitment consultants and the one program manager positions have been filled and are currently working with LDSS staff to support improved kinship care practices, and foster family recruitment and retention throughout the life of a case.

VDSS regional permanency consultants have been tasked with providing ongoing review of all placement of children in congregate care, to ensure that such placements are medically necessary and to support the movement of these children to family-based placements as soon as possible. Additionally, these consultants provide psychotropic medication oversight and provide oversight for the provision of physical, mental, and behavioral health screening and services. Regional permanency consultants review all cases where children have been in care for 24 months or longer and cases where youth are at-risk of aging out of foster care, and assist LDSS to find permanent homes for these children.

Strategic consultant positions have been created in order to improve foster care performance outcomes through Continuous Quality Improvement (CQI) and review processes. These positions will be filled once the hiring freeze is lifted. Strategic and permanency consultants will identify problematic trends in foster care, address any issues in regions and localities indicated through data analyses, ensure the provisions of the Foster Care Omnibus Bill continue to be fulfilled, and work to improve foster care outcomes. Issues pertaining to LDSS staffing will be identified through the CQI and performance management processes in place.

Status of reporting requirements

Although the position of Director of Foster Care Health and Safety has not been filled, provisions of the Foster Care Omnibus Bill related to the position are continuing to be addressed. Since the hiring freeze has now been lifted, VDSS will continue to fill positions and work toward full implementation of the requirements of the Foster Care Omnibus Bill. The status of each of the objectives within the reporting criteria of the Foster Care Omnibus Bill is noted below:

(i) Identify local boards of social services (local boards) that fail to provide foster care services in a manner that complies with applicable laws and regulations and ensures the health, safety, and well-being of all children in the supervision and control of the local board; and, (ii) ensure that local boards remedy such failures, including those related to caseworker visits, safe and appropriate

placement settings, and the provision of physical, mental, and behavioral health screenings and services

Workgroups comprised of VDSS staff and LDSS directors convened in 2020 to address the accountability for the provision of foster care services. Workgroups designed draft guidance and processes to address when a local board fails to provide foster care services in a manner that complies with applicable laws and regulations. A corrective action process was defined and incorporated into the Division of Family Services' CQI program and operationalized through the design of a partnership Memorandum of Understanding (MOU) between VDSS and LDSS. These MOUs will begin in the spring of 2021, and will standardize the performance expectations related to the criteria within the Foster Care Omnibus Bill and provide a mechanism through which LDSS can understand the process if they fail to sufficiently provide foster care services. The corrective action process includes performance management stages designed to reduce the likelihood of an agency and local board needing to enter into a corrective action phase; but, also provides for a process in the event that a need should arise, including provisions for intervention by the Commissioner in emergency situations pertaining to failure by a local board to provide foster care services.

Caseworker visits
Caseworkers have been able to increase worker visits despite receiving very few additional resources. Workers have been consistently meeting the compliance expectation that 95% of children in foster care are visited face-to-face each month, as established in 2014. For the reporting period of October 1, 2019 to March 31, 2020, the face-to-face monthly visit rate was 96.57% with 75.15% of those visits taking place in the child's residence. VDSS has exceeded the federal standard for visits in the child's residence being at 50%. VDSS provided additional technology to LDSS during the pandemic to ensure that worker visits could be completed virtually when necessary. VDSS continued to maintain the frequency of worker visits and in many cases increased the frequency with the use of technology.

Safe and appropriate placements
Diligent recruitment consultants and the new diligent recruitment program manager are responsible for implementing a data-driven strategic plan, to be updated biennially, to improve the recruitment and retention of foster families and provide greater availability of safe and appropriate placements. Objectives of the Diligent Recruitment plan include improving the availability and quality of data regarding available foster homes. The diligent recruitment consultants and program manager have been working to improve data collection. Diligent recruitment consultants will also assist LDSS in developing data driven recruitment plans to ensure that foster families are available in the communities from which children are removed and that foster families represent the racial and ethnic makeup of children in foster care.

Practice guidance has been revised to include the requirement of relative searches and documentation of efforts in the electronic case management system (OASIS/COMPASS) at the following points: prior to removal, at each placement change, and annually. Upon the release of the updated guidance, training for workers was conducted. Additionally, reminders for workers and supervisors was added to the COMPASS Mobility App to correspond with each aforementioned search point. Relative search content has also been added to regulations and is making its way through the regulatory process.

To further support the use of appropriate placements, regional consultants review all cases where children have been in care for 24 months or longer and cases where youth are at-risk of aging out of foster care, and assist LDSS to find permanent homes for these children. These elements are included in the ongoing statewide CQI process to identify trends and provide analysis and follow up with LDSS. Quarterly reports, which track the percentage of children in foster care by length of stay and the average length of stay by state and region, have been developed and are under review for approval.

VDSS is also working with LDSS on maintaining accurate resource family lists, which include demographic and capacity information. Due to limitations in the current case management system, OASIS, this is a very labor intensive process.

Provision of physical, mental and behavioral health screenings and services
Regional consultants provide oversight for LDSS for the provision of physical, mental, and behavioral health screening and services for children and youth in foster care. Additionally, VDSS partners with the Department of Medical Assistance Services (DMAS) through the use of an annual report published by DMAS pertaining to foster care, as well as ongoing collaboration between the two agencies. This ensures that VDSS utilizes information and data to address physical, mental and behavioral health screenings and services from an administrative level. In the *2018-19 Foster Care Focused Study*, physical, mental and behavioral health screening and service rates were better than those in the non-foster care population control group. Children and youth in foster care had annual access to primary care practitioners at a rate of 96.8%, compared with 93.9% for non-foster care children and youth; an annual dental visit rate of 87.4%, compared with 66.9% for non-foster care populations; and, access to preventative dental services at a rate of 82.5%, compared with 60% for non-foster care populations. For behavioral health comparisons, children in foster care had a 30-day follow up after emergency department visits for mental illness at a rate of 94.9%, compared with 90.9% for non-foster care populations. The only area where children and youth in foster care had lower rates was regarding access to a seven-day follow-up after hospitalization for mental illness, which was at a rate of 37.6%, compared with 47.2% of non-foster care populations. VDSS will continue to work with DMAS to monitor these data and address all deficiencies. (Commonwealth of Virginia Department of Medical Assistance Services, *2018-19 Foster Care Focused Study*, 2020).

(iii) Ensure that reports of abuse, neglect, mistreatment, and deaths of children in foster care are properly investigated

LDSS are responsible for the investigation of reports of child abuse, neglect, and deaths of children in foster care. At this time, VDSS does not have the automated infrastructure to track how many maltreatment reports involve children in foster care; however, VDSS does track the number of child deaths involving children in foster care. In SFY20, LDSS investigated two deaths involving children in foster care. One investigation resulted in an unfounded disposition (a review of the facts did not show that child abuse or neglect occurred by a preponderance of the evidence). The second investigation is pending disposition. To ensure proper investigations are conducted, LDSS receive training, coaching, and technical assistance from state staff (which includes regional staff). Internal CQI processes evaluate and monitor these elements on an ongoing basis.

There are five regional teams in Virginia that review child deaths investigated by Child Protective Services (CPS). These teams are led by regional CPS staff. Reviews are conducted by a multi-agency, multi-disciplinary process that systematically examines circumstances surrounding the child's death. The purpose of the review by the teams is to enable VDSS, LDSS, and local community agencies to identify important issues related to child protection and to take appropriate action to prevent child fatalities. Virginia's child-fatality review teams use the National Fatality Review Case Reporting System, Version 5.1 data tool, from the National Maternal Child Health Center for Child Death Review, to collect comprehensive information and document the circumstances involved in the death, investigative actions, services provided or needed, key risk factors, and actions recommended and/or taken by the review team. Child-fatality data is collected and analyzed on an annual basis and reported to community stakeholders, the State Board of Social Services, LDSS, and the general public. Child Death Reports are published on the VDSS public website.

In addition to case level reviews, all five regional child fatality review teams develop and implement recommendations to prevent future child maltreatment deaths. To support the recommendations of the regional teams, VDSS' recent work has included:

- Significant revisions to CPS Guidance, Section 11: *Child Deaths,* to provide a detailed investigative protocol to promote joint multi-disciplinary investigations of child deaths and ensure regional permanency consultants are notified when a child in foster care dies. Publication of the revised guidance is slated for 2021.
- Collaboration with the Department of Criminal Justice Services to develop a child death investigative protocol for law enforcement.
- Development of Child Death Investigation Guidelines for inclusion in local multi-disciplinary memorandums of understanding. Publication will accompany the release of the revised program guidance in 2021.
- Development of a Child Fatality Decision Tree Tool to promote consistent decision-making by LDSS when evaluating the validity of a complaint involving the death of a child. Publication will accompany the release of revised program guidance in 2021.

(iv) Manage the process through which the Department of Social Services reviews children's residential facility placements for medical necessity

In the spring of 2020, VDSS conducted a review of all children placed in congregate care in Virginia to determine if there were children that were in congregate care settings without medical necessity. Out of the 568 youth in congregate care, it was found that 27 children did not have a clinical diagnosis that would warrant that level of care. Regional permanency consultants conducted case meetings to gain a better understanding of those cases. It was determined that those youth were appropriately placed due to their behavioral needs. Additionally, four of the youth were ready for discharge from congregate care. The regional permanency consultants assisted in discharge planning to ensure those youth were discharged in a timely manner. VDSS submitted the required report certifying that they had completed the review of all cases of children in congregate care without a clinical need to be in congregate care. The certification was submitted in June 2020.

VDSS has also developed an ongoing review process for children and youth placed in congregate care in order to continue to assess medical necessity, support the movement of these children to family-based placements as soon as possible, and, reduce the use of congregate care placements across the state. VDSS will continue this process in order to identify the children for whom congregate care is not appropriate. As trends are identified within each region, regional permanency consultants and diligent recruitment consultants will provide assistance to LDSS in developing plans to transition children into family based care. A priority will be placed on providing opportunities for children to connect with relatives and fictive kin and to identify those relatives and fictive kin who may serve as a placement for these children. Cases are prioritized based on the child's age, permanency goal, length of time in foster care, and length of time in congregate care. Regional permanency consultants support the efforts to move children out of congregate care and into family-based settings as part of the ongoing review process. Since the review of congregate care cases began in early 2020, there has been an 11% decrease in the number of children placed in congregate care.

Congregate care placements and other foster care services elements identified is the Foster Care Omnibus Bill are studied and addressed through the case review process, and also as part of the Division of Family Services' ongoing CQI process. The data review process through the CQI program is broken down across levels within the system. A quarterly CQI review process looks at specific topics and overall progress towards goals and will include a data report and meeting to discuss topics and trends, with an overall trend analysis of state data performed in order to show VDSS where Virginia is making progress and what areas still need increased focus and attention. Regional trend

analyses help consultants develop comprehensive capacity building plans to address foster care service failures (and other areas of concern outside of the Foster Care Omnibus Bill criteria). Additionally, local trends and individual performance data reviews with regional consultants allow localities to understand patterns within their own jurisdictions and units and address any failures prior to having to enter into a corrective action plan or the need for the Commissioner to intervene. The MOU in development by the LDSS-VDSS workgroups includes performance management via CQI, corrective action procedures, when necessary, and expectations for foster care performance.

(v)Track health outcomes of children in foster care

The VDSS/DMAS partnership helps to better understand health outcomes for children in foster care, through ongoing collaboration, as well as utilizing the annual *Foster Care Focused Study* published by DMAS, which focuses on physical, mental and behavioral health access and diagnoses. This partnership allows DMAS and VDSS to work collaboratively to meet the federal requirements related to the Virginia Health Care Oversight and Coordination Plan. More specifically, Virginia's high rate of psychotropic medication prescription for children and youth in foster care has been a focus of DMAS and VDSS.

The *2018–2019 Foster Care Focused Study*, published by DMAS, includes the following information: "foster children were far more likely than non-foster children to have multiple antipsychotic prescriptions as well as new antipsychotic prescriptions without a diagnosis approved for antipsychotic use, even though these findings also suggest that foster children were more likely to have tried another treatment approach." Of all children and youth in foster care that are prescribed antipsychotic medication, 87.8% are also receiving outpatient psychosocial care, compared to 68% for non-foster care children. These findings indicate that while children in foster are being prescribed medication at a higher rate, alternative approaches and outpatient treatment are being provided at a higher rate in order to supplement antipsychotic medications.

In order ensure that psychotropic medication is not being overused among children in foster care, VDSS has instituted an oversight protocol which includes a comprehensive consent document to be completed by the service workers that addresses the following topics:

- How consent is to be obtained with the youth/child.
- How birth parents are to be involved in the decision making.
- How caregivers are to provide information to the prescriber regarding changes in behavior or mood and how those caregivers receive information about prescriptions and any potential side effects.
- Affirming that information about medical conditions and medications are to be shared with prescribers of psychotropic medication and information about psychotropic medication is to be shared with a youth's other healthcare providers.
- Establishing that regional consultants provide oversight for the provision of physical, mental, and behavioral health screening and services for children and youth in foster care.

Once VDSS is able to hire the Director of Foster Care Health and Safety, additional work will be done to build out the ability to track health outcomes for children in foster care and directly support this requirement.

Conclusion

VDSS is committed to continuing to address the items outlined in the Foster Care Omnibus Bill, however, limitations in funding and investment in system upgrades has restricted VDSS' ability to fully execute all aspects of the bill. Despite these barriers, VDSS has made significant progress in

addressing many of the critical aspects encompassed within the bill. VDSS will continue to develop effective practices and innovative ways to ensure the health, safety, and well-being of the children and families served.