COMMONWEALTH of VIRGINIA
DEPARTMENT OF SOCIAL SERVICES
Office of the Commissioner

S. Duke Storen
Commissioner

December 30, 2021

MEMORANDUM

TO: The Honorable Ralph S. Northam
Governor of Virginia

Members, Virginia General Assembly

FROM: S. Duke Storen

SUBJECT: Report on the Director of Foster Care Health & Safety

I am pleased to provide the annual update regarding the Department of Social Services' Director of Foster Care Health & Safety, pursuant to Item 446 of the 2019 Acts of Assembly (Foster Care Omnibus Bill). Please let me know if you have any questions.

SDS:kc
Attachment

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Report on Chapter 446 of the 2019 Acts of Assembly
Foster Care Omnibus Bill
November 30, 2021

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 until the COVID-19 pandemic began in March 2020. Interviews were conducted on two different dates, during which several promising candidates expressed interest in the position of Director of Foster Care Health and Safety, so long as the position was converted into a part-time position. 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 due to COVID-19 and instituted a hiring freeze. The state of emergency expired on June 30, 2021. VDSS is currently prioritizing efforts to fill positions which became vacant during the hiring freeze. The position of Director of Foster Care Health and Safety is being evaluated to post with revised criteria so that VDSS will be able to recruit more effectively for the position.

Regional Office Staffing

The Foster Care Omnibus Bill established two additional regional consultant positions in each of the five regional offices. These positions were intended to significantly increase the level of technical assistance support and ongoing review of case work which VDSS can provide the LDSS. As of July 2019, six of the ten new positions were filled. VDSS continued to advertise and recruit for the four vacant positions until the COVID-19 pandemic began in March 2020 and the subsequent hiring freeze was instituted. Once the hiring freeze was lifted, VDSS was able to fill the four remaining vacancies. As new consultants were hired, VDSS focused on restructuring the current regional consultant positions, so that there would be three permanency consultants and a diligent recruitment consultant in each of the five regions. At this time, all five regional offices are fully staffed with three permanency consultants and one diligent recruitment consultant in each region.

The five diligent recruitment consultants report to a diligent recruitment program manager position, also established through the Foster Care Omnibus Bill. The five regional diligent recruitment consultants and the program manager are working with LDSS staff, especially to support improved kinship foster care practices, as well as expanding the pool of available foster families through enhanced foster family recruitment and retention activities.

VDSS regional permanency consultants have been tasked with providing ongoing review of all placement of children in congregate care (which includes both group home and residential placements), 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.

Consultants continue to work with the Quality Assurance and Accountability (QAA) case reviewer team, program managers, and the Continual Quality Improvement (CQI) team at the Division of Family Services (DFS) at VDSS to identify particular trends and case results surrounding congregate care, problem solve with local agencies to reduce the use of congregate care, and promote kinship placements.

Strategic consultant positions have been created in order to improve foster care performance outcomes through CQI and review processes. When the hiring freeze was lifted in July 2021, VDSS began to recruit for these five positions through an active job posting. The job posting will continue to run until all five positions are filled. Strategic and permanency consultants will be responsible for leading regional CQI, identifying problematic trends in foster care, addressing 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 yet been filled, the provisions of the Foster Care Omnibus Bill related to the position are being addressed as VDSS works toward full implementation of the requirements of the bill. The status of each of the objectives within the reporting criteria of the Foster Care Omnibus Bill are 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 define 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. Guidance was published in May 2021 that defined the corrective action process. This process standardizes the performance expectations related to the criteria within the Foster Care Omnibus Bill and provides a mechanism through which LDSS can understand their level of risk should 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. It also provides a process in the event that a need should arise, including provisions for immediate intervention by the Commissioner in emergency situations pertaining to the failure by a local board to provide foster care services. The performance management process outlined in Section A of the Child and Family Services Manual is tied into the overall CQI process and includes provisions for shared fiscal accountability for title IV-E errors.

Caseworker Visits

LDSS caseworkers have been consistently meeting the compliance expectation that 95% of children in foster care are visited face-to-face each month since it was established in 2014. For the reporting period of July 1, 2020 to June 30, 2021, the face-to-face monthly visit rate was 97.0%, with 83.6% of those visits taking place in the child's residence. The federal standard for visits in the child's residence is 50%; therefore, VDSS has exceeded the standard by 33.6%. VDSS provided additional technology to LDSS during the pandemic to ensure that worker visits could be completed virtually (as permitted by federal and state regulatory waivers) and continues to provide a virtual platform to local agencies that is HIPPA-compliant to allow for virtual visits, when appropriate. In many cases, the frequency of LDSS worker visits has increased with the use of this 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. The Diligent Recruitment plan includes the objective of improving the availability and quality of data regarding available foster homes. The diligent recruitment consultants and program manager have been working with LDSS specifically on improving data accuracy through the regular addition of newly approved homes and the removal of homes which are no longer approved in the electronic case management system (OASIS/COMPASS). Diligent recruitment consultants 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. The diligent recruitment team's focus on increasing the utilization of relative foster homes has resulted in an increase in the rate of relative foster home placement to 9.6% in 2021. The rate had been stagnant at about 6% from 2010 to 2020.

The Department staff revised practice guidance to include the requirement of relative searches and documentation of efforts in the electronic case management system at the following points: prior to removal; at each placement change; and annually. Upon the release of the updated guidance, the Department conducted training and included reminders for workers and supervisors in the COMPASS Mobility App. Relative search content has also been added to regulations and is making its way through the regulatory process. Practice consultants have focused on relative searches and provided technical assistance around this through their work with the congregate care reviews.

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, 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 an internal review for approval by VDSS leadership VDSS is also working with LDSS on maintaining accurate resource family lists, which include demographic and capacity information. Caseload standards can also impact the ability for LDSS to make appropriate placements. In 2020, VDSS established caseload standards of 15 cases per each Family Services Specialist. The

caseload standard has been included in guidance and was included in a regulatory action that will enter the final stage on December 15, 2021 when it is presented to the State Board of Social Services. As a result of implementing a caseload standard, the percentage of children assigned to caseworkers who carried caseloads higher than 15 was reduced from 1.1% to 0.6% in SFY2021.

Due to limitations in the current case management system, OASIS, gathering data is a labor intensive process. In order to assist in tracking these measures, VDSS is working on developing a dashboard that will house this data and will be made available to local boards and local agencies. The data and measures that will be housed in the dashboard include: (1) the number of children who did not receive all required caseworker visits and the amount of time that has lapsed since each child's last visit; (2) the number of children placed in children's residential facilities; (3) the number of children who have been in foster care for more than 24 months, 36 months, and 48 months; (4) safety concerns identified in case reviews and whether such concerns have been alleviated; (5) the number of foster care caseworkers with caseloads exceeding the standard established as a result of the directive in § 63.2-913.1 of the Code of Virginia; (6) the number of children in foster care assigned to a caseworker with a caseload exceeding the standard established as a result of the directive in § 63.2-913.1; and (7) the turnover rate of foster care caseworkers and the level of experience of each of these caseworkers. The LDSS will be required to provide any data and information necessary for VDSS to populate the dashboard.

Provision of Physical, Mental and Behavioral Health Screenings and Services

Regional consultants provide oversight of 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 will continue to utilize information and data to address physical, mental and behavioral health screenings and services from an administrative level. In the *2019-20 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 97.1%, compared with 93.4% for non-foster care children and youth; an annual dental visit rate of 86.9%, compared with 63.4% for non-foster care populations; and, access to preventative dental services at a rate of 81.7%, compared with 56.5% for non-foster care populations. For behavioral health comparisons, children in foster care had a 30-day follow up after emergency LDSS visits for mental illness at a rate of 92.6%, compared with 83.9% 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 38.7%, compared with 44.6% 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, *2019-20 Foster Care Focused Study,* 2021).

(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 SFY21, LDSS investigated one death involving a child in foster care. This investigation has been suspended while the agency awaits the autopsy results. 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), which would include the death of a child in foster care. 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, 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 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 2022.
- 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. The publication will be referenced in the release of the 2022 program guidance.
- Collaboration with the Training Program at VDSS to develop a specific training for Family Services Specialists on child fatalities and near fatalities. The development of this course was delayed due to the inability to hire the CPS curriculum developer during the hiring freeze. The position was recently filled and the individual has begun work on developing this training.
- 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 late 2021.

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

VDSS has 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. 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.

In the spring of 2020, VDSS began to hold ongoing congregate care reviews and assessments of all children placed in congregate care in Virginia to determine if there were children that were in congregate care settings without medical necessity. These reviews and assessments were made a part of the CQI process. For SFY2021, an average of 10.9% of children were in congregate care placements, which was a decrease from the average of 12.1% of children in SFY2020. Regional permanency consultants continue to use the review data to conduct case meetings and determine appropriate placements. Consultants assist in discharge planning to ensure youth are discharged timely and provide support to agencies in diligent recruitment efforts to locate family based settings, including kinship placements.

Congregate care placements and other foster care services elements identified in the Foster Care Omnibus Bill are studied and addressed through the case review process, and also as part of the VDSS' 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 includes a data report and meeting to discuss topics and trends, with an overall trend analysis of state data performed in order to show where Virginia is making progress and the areas still needing 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 needing a corrective action plan or the need for intervention by the Commissioner. In early 2022, regional CQI events will begin, which will build out the process even further for a greater ability for localities to understand their data regarding congregate care use, the root causes of congregate care placements, and how to effectively reduce their use of non-family based settings.

(v)Track health outcomes of children in foster care

The VDSS and 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 *2019–20 Foster Care Focused Study* provides comparative analysis of foster care and non-foster care populations. This recent study demonstrated that children in foster care have higher rates of healthcare utilization than comparable non-foster care children for most study indicators.

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 worker that addresses the following topics:

- How consent is to be obtained for 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 requirements outlined in the Foster Care Omnibus Bill, including the hiring of a Director of Foster Care Health and Safety, developing a dashboard for key outcomes and indicators, continuing efforts to reduce use of congregate care placements through the congregate care review process, and ensuring shared accountability and increased oversight of LDSS for improved foster care outcomes. Despite barriers presented by a global pandemic, a state hiring freeze, a public health emergency, and an antiquated case management system, VDSS has made significant progress in addressing many of the critical aspects encompassed within the Foster Care Omnibus Bill. The additional resources provided by General Assembly have ensured that outcomes for children in foster care are moving in the right direction and that VDSS will continue to provide effective support and oversight, as well as to develop innovative ways to ensure the health, safety, and well-being of the children and families served.