VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 446

An Act to amend and reenact §§ 63.2-209, 63.2-900, 63.2-900.1, 63.2-904, 63.2-906, and 63.2-907 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 63.2-904.1, 63.2-904.2, and 63.2-913.1, relating to foster care omnibus.

[S 1339]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-209, 63.2-900, 63.2-900.1, 63.2-904, 63.2-906, and 63.2-907 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 63.2-904.1, 63.2-904.2, and 63.2-913.1 as follows:

§ 63.2-209. Divisions of Department; staffing.

A. The Commissioner shall establish in the Department such divisions and regional offices as may be necessary.

B. The Commissioner shall ensure that regional offices responsible for oversight of foster care and adoption services are equipped with sufficient staff, and in no event less than four staff members, to provide effective oversight of and assistance with foster care and adoption services provided by local boards in the Commonwealth. At least one staff member shall be tasked with (i) reviewing the placement of children by local boards in children's residential facilities to verify that such placements are warranted by medical necessity and (ii) monitoring other health-related issues, such as medication management, frequency of visits with health care providers, and use of psychotropic medications. At least one staff member shall be tasked with supporting the efforts of local boards to find family-based placement options for children who are placed in or at risk of being placed in a children's residential facility without a medical necessity for congregate care. At least one staff member shall be tasked with supporting the efforts of local boards to find a permanent placement for children who have the greatest risk of aging out of foster care without a permanent family. At least one staff member shall be tasked with conducting foster care and adoption case reviews to ensure that local boards within the region are providing foster care and adoption services in a manner that complies with state and federal laws and regulations and protects the health, safety, and well-being of children under the supervision and control of such local boards. Notwithstanding any other provision of law, staff of regional offices shall have the authority to provide temporary staff support to local departments experiencing higher than normal caseloads or staff shortages.

§ 63.2-900. Accepting children for placement in homes, facilities, etc., by local boards.

A. Pursuant to § 63.2-319, a local board shall have the right to accept for placement in suitable family homes, children's residential facilities or independent living arrangements, subject to the supervision of the Commissioner and in accordance with regulations adopted by the Board, such persons under 18 years of age as may be entrusted to it by the parent, parents or guardian, committed by any court of competent jurisdiction, or placed through an agreement between it and the parent, parents or guardians where legal custody remains with the parent, parents, or guardians.

The Board shall adopt regulations for the provision of foster care services by local boards, which shall be directed toward the prevention of unnecessary foster care placements and towards the immediate care of and permanent planning for children in the custody of or placed by local boards and that shall achieve, as quickly as practicable, permanent placements for such children. The local board shall first seek out kinship care options to keep children out of foster care and as a placement option for those children in foster care, if it is in the child's best interests, pursuant to § 63.2-900.1. In cases in which a child cannot be returned to his prior family or placed for adoption and kinship care is not currently in the best interests of the child, the local board shall consider the placement and services that afford the best alternative for protecting the child's welfare. Placements may include but are not limited to family foster care, treatment foster care and residential care. Services may include but are not limited to assessment and stabilization, diligent family search, intensive in-home, intensive wraparound, respite, mentoring, family mentoring, adoption support, supported adoption, crisis stabilization or other community-based services. The Board shall also approve in foster care policy the language of the agreement required in § 63.2-902. The agreement shall include at a minimum a Code of Ethics and mutual responsibilities for all parties to the agreement.

Within 30 days of accepting for foster care placement a person under 18 years of age whose father is unknown, the local board shall request a search of the Virginia Birth Father Registry established pursuant to Article 7 (§ 63.2-1249 et seq.) of Chapter 12 to determine whether any man has registered as the putative father of the child. If the search results indicate that a man has registered as the putative father of the child, the local board shall contact the man to begin the process to determine paternity.

The local board shall, in accordance with the regulations adopted by the Board and in accordance with the entrustment agreement or other order by which such person is entrusted or committed to its care, have custody and control of the person so entrusted or committed to it until he is lawfully discharged, has been adopted or has attained his majority.

Whenever a local board places a child where legal custody remains with the parent, parents or guardians, the board shall enter into an agreement with the parent, parents or guardians. The agreement shall specify the responsibilities of each for the care and control of the child.

The local board shall have authority to place for adoption, and to consent to the adoption of, any child properly committed or entrusted to its care when the order of commitment or entrustment agreement between the parent or parents and the agency provides for the termination of all parental rights and responsibilities with respect to the child for the purpose of placing and consenting to the adoption of the child.

The local board shall also have the right to accept temporary custody of any person under 18 years of age taken into custody pursuant to subdivision B of § 16.1-246 or § 63.2-1517. The placement of a child in a foster home, whether within or without the Commonwealth, shall not be for the purpose of adoption unless the placement agreement between the foster parents and the local board specifically so stipulates.

B. Prior to the approval of any family for placement of a child, a home study shall be completed and the prospective foster or adoptive parents shall be informed that information about shaken baby syndrome, its effects, and resources for help and support for caretakers is available on a website maintained by the Department as prescribed in regulations adopted by the Board. Home studies by local boards shall be conducted in accordance with the Mutual Family Assessment home study template and any addenda thereto developed by the Department.

C. Prior to placing any such child in any foster home or children's residential facility, the local board shall enter into a written agreement with the foster parents, pursuant to § 63.2-902, or other appropriate custodian setting forth therein the conditions under which the child is so placed pursuant to § 63.2-902. However, if a child is placed in a children's residential facility licensed as a temporary emergency shelter, and a verbal agreement for placement is secured within eight hours of the child's arrival at the facility, the written agreement does not need to be entered into prior to placement, but shall be completed and signed by the local board and the facility representative within 24 hours of the child's arrival or by the end of the next business day after the child's arrival.

Agreements entered into pursuant to this subsection shall include a statement by the local board that all reasonably ascertainable background, medical, and psychological records of the child, including whether the child has been the subject of an investigation as the perpetrator of sexual abuse, have been provided to the foster home or children's residential facility.

D. Within 72 hours of placing a child of school age in a foster care placement, as defined in § 63.2-100, the local social services agency making such placement shall, in writing, (i) notify the principal of the school in which the student is to be enrolled and the superintendent of the relevant school division or his designee of such placement, and (ii) inform the principal of the status of the parental rights.

If the documents required for enrollment of the foster child pursuant to § 22.1-3.1, 22.1-270 or 22.1-271.2, are not immediately available upon taking the child into custody, the placing social services agency shall obtain and produce or otherwise ensure compliance with such requirements for the foster child within 30 days after the child's enrollment.

E. Every local board shall submit to the Department through its statewide automated system the names of all foster parents licensed to provide foster care services in the locality served by the local board and update such list quarterly.

§ 63.2-900.1. Kinship foster care.

A. The local board shall, in accordance with regulations adopted by the Board, determine whether the child has a relative who is eligible to become a kinship foster parent. *Searches for relatives eligible to serve as a kinship foster parent shall be conducted at the time the child enters foster care, at least annually thereafter, and prior to any subsequent changes to the child's placement setting.*

B. Kinship foster care placements pursuant to this section shall be subject to all requirements of, and shall be eligible for all services related to, foster care placement contained in this chapter. Subject to approval by the Commissioner, a local board may grant a waiver of the Board's standards for foster home approval, set forth in regulations, that are not related to safety. Waivers granted pursuant to this subsection shall be considered and, if appropriate, granted on a case-by-case basis and shall include consideration of the unique needs of each child to be placed. Upon request by a local board, the Commissioner shall review the local board's decision and reasoning to grant a waiver and shall verify that the foster home approval standard being waived is not related to safety. The approval or disapproval by the Commissioner of the local board's waiver shall not be considered a case decision as defined in § 2.2-4001.

C. The kinship foster parent shall be eligible to receive payment at the full foster care rate for the care of the child.

D. A child placed in kinship foster care pursuant to this section shall not be removed from the physical custody of the kinship foster parent, provided the child has been living with the kinship foster parent for six consecutive months and the placement continues to meet approval standards for foster care, unless (i) the kinship foster parent consents to the removal; (ii) removal is agreed upon at a family partnership meeting as defined by the Department; (iii) removal is ordered by a court of competent jurisdiction; or (iv) removal is warranted pursuant to § 63.2-1517.

§ 63.2-904. Investigation, visitation, and supervision of foster homes or independent living arrangement; removal of child.

A. Before placing or arranging for the placement of any such child in a foster home or independent living arrangement, a local board or licensed child-placing agency shall cause a careful study to be made to determine the suitability of such home or independent living arrangement, and after placement shall cause such home or independent living arrangement and child to be visited as often as necessary to protect the interests of such child. Home studies by local boards shall be conducted in accordance with the Mutual Family Assessment home study template and any addenda thereto developed by the Department.

B. Every local board or licensed child-placing agency that places a child in a foster home or independent living arrangement shall maintain such supervision over such home or independent living arrangement as shall be required by the standards and policies established by the Board.

C. Whenever any child placed by a local board or licensed child-placing agency and still under its control or supervision is subject, in the home in which he is placed, to unwholesome influences or to neglect or mistreatment, or whenever the Commissioner shall so order, such local board or agency shall cause the child to be removed from such home and shall make for him such arrangements as may be approved by the Commissioner. *Notwithstanding any other provision of law, the Commissioner shall have the authority to place, remove, or direct the placement or removal of any child who is under the supervision and control of a local board or licensed child-placing agency. Pursuant to such authority, the Commissioner shall remove or direct the removal of any child placed by a local board or licensed child-placing agency in a foster home or children's residential facility that fails to comply with any state or federal requirements intended to protect the child's health, safety, or well-being.*

D. Consistent with the reasonable and prudent parent standard defined in 42 U.S.C. § 675(10)(A), caregivers for children in foster care shall support normalcy for such children. The Board shall adopt regulations to assist local boards and licensed child-placing agencies in carrying out practices that support careful and sensible parental decisions that maintain the health, safety, and best interest of the child while at the same time encouraging his emotional and developmental growth.

§ 63.2-904.1. Intervention by Commissioner; corrective action plans; assumption of temporary control.

A. The Commissioner shall have the authority to create and enforce a corrective action plan for any local board that, in the Commissioner's discretion, (i) fails to provide foster care services or make placement and removal decisions in accordance with this title or Board regulations or (ii) takes any action or fails to act in a manner that poses a substantial risk to the health, safety, or well-being of any child under its supervision and control. The corrective action plan shall (a) include specific objectives that the local board must meet in order to comply with applicable laws and regulations and ensure the health, safety, and well-being of all children in its supervision and control and (b) set the date by which such objectives must be completed, which shall not extend beyond 90 days after implementation of the corrective action plan unless the Commissioner determines that the objectives of the corrective action plan cannot be reasonably accomplished within such time frame. During the time the corrective action plan is in effect, the Commissioner may direct Department staff to provide assistance to the local board, monitor its progress in meeting the objectives stated in the plan, and take any measures necessary to protect the health, safety, and well-being of children in the local board's supervision and control. The Commissioner shall provide regular updates to the chairman of the Board, chairman of the local board, and local director regarding the local board's progress in meeting the objectives of the corrective action plan.

Prior to implementing a corrective action plan, the Commissioner shall provide written notice of his intent to implement the corrective action plan and the reasons for which such plan was developed to the chairman of the Board, chairman of the local board, and local director. Upon request by the chairman of the Board, chairman of the local board, or local director, the Commissioner shall hold a hearing to determine whether a corrective action plan is appropriate.

B. If the local board fails to timely comply with the corrective action plan, the Commissioner shall have the authority to temporarily assume control over all or part of the local board's foster care services and associated funds. Upon assuming such control, the Commissioner may utilize Department staff or contract with private entities to provide foster care services in the locality served by the local board and manage funds appropriated for such purposes. For any period during which a local board is under the Commissioner's control, the Commissioner shall work with the local board and local director to make any adjustments necessary to facilitate the local board's resumption of control over its foster care services and funds. The Commissioner shall remit control of such foster care services and funds to

the local board upon determining that the local board has made all adjustments necessary to ensure that foster care services are provided in compliance with state and federal law and regulations and in a manner that adequately protects the health, safety, and well-being of all children in its supervision and control.

C. Whenever the Commissioner assumes temporary control over a local board's foster care services and funds pursuant to this section, the amount of local funding made available for such services shall remain equal to or greater than the amounts available immediately prior to the Commissioner's assumption of temporary control. Additionally, the locality in which the local board is located shall be required to pay the local share of any costs associated with any services necessary to align the local board's foster care services with state and federal laws and regulations.

§ 63.2-904.2. Complaint system.

The Commissioner shall establish and maintain mechanisms to receive reports and complaints from foster parents, interested stakeholders, and other citizens of the Commonwealth regarding violations of laws or regulations applicable to foster care and any other matters affecting the health, safety, or well-being of children in foster care. Such mechanisms shall include establishing a statewide, toll-free hotline to be administered by the Department; publicizing the existence of such hotline; and enhancing electronic communication with the Department for the receipt of reports or complaints.

Reports and complaints received through the foster care hotline or other mechanisms established pursuant to this section shall be investigated pursuant to Board regulations. All information received or maintained by the Department in connection with such reports, complaints, or investigations shall be confidential and not subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that such information may be relayed and used on a confidential basis pursuant to Board regulations for the purposes of investigation and to protect the health, safety, and well-being of children in foster care.

§ 63.2-906. Foster care plans; permissible plan goals; court review of foster children.

A. Each child who is committed or entrusted to the care of a local board or to a licensed child-placing agency or who is placed through an agreement between a local board and the parent, parents or guardians, where legal custody remains with the parent, parents or guardians, shall have a foster care plan prepared by the local department, the child welfare agency, or the family assessment and planning team established pursuant to § 2.2-5207, as specified in § 16.1-281. The representatives of such *local* department, child welfare agency, or team shall *(i)* involve the child's parent(s) in the development of the plan, except when parental rights have been terminated or the local department ~~of social services~~ or child welfare agency has made diligent efforts to locate the parent(s) and such parent(s) cannot be located, and any other person or persons standing in loco parentis at the time the board or child welfare agency obtained custody or the board or the child welfare agency placed the child *and (ii) for any child for whom reunification remains the goal, meet and consult with the child's parent(s) or other person standing in loco parentis, provided that the parent(s) or other person has been located and parental rights have not been terminated, no less than once every two months and at all critical decision-making points throughout the child's foster care case*. The representatives of such department, child welfare agency, or team shall involve the child in the development of the plan, if such involvement is consistent with the best interests of the child. In cases where either the parent(s) or child is not involved in the development of the plan, the department, child welfare agency, or team shall include in the plan a full description of the reasons therefor in accordance with § 16.1-281.

A court may place a child in the care and custody of ~~(i)~~ *(a)* a public agency in accordance with § 16.1-251 or 16.1-252, and ~~(ii)~~ *(b)* a public or licensed private child-placing agency in accordance with § 16.1-278.2, 16.1-278.4, 16.1-278.5, 16.1-278.6, or 16.1-278.8. Children may be placed by voluntary relinquishment in the care and custody of a public or private agency in accordance with § 16.1-277.01 or §§ 16.1-277.02 and 16.1-278.3. Children may be placed through an agreement where legal custody remains with the parent, parents or guardians in accordance with §§ 63.2-900 and 63.2-903, or § 2.2-5208.

B. Each child in foster care shall be assigned a permanent plan goal to be reviewed and approved by the juvenile and domestic relations district court having jurisdiction of the child's case. Permissible plan goals are to:

1. Transfer custody of the child to his prior family;
2. Transfer custody of the child to a relative other than his prior family;
3. Finalize an adoption of the child;
4. Place a child who is 16 years of age or older in permanent foster care;
5. Transition to independent living if, and only if, the child is admitted to the United States as a refugee or asylee; or
6. Place a child who is 16 years of age or older in another planned permanent living arrangement in accordance with subsection A2 of § 16.1-282.1.

C. Each child in foster care shall be subject to the permanency planning and review procedures established in §§ 16.1-281, 16.1-282, and 16.1-282.1.

§ 63.2-907. Administrative review of children in foster care.

Each local board shall establish and keep current a social service plan with service objectives and

shall provide the necessary social services for achievement of a permanent home for each child for whom it has care and custody or has an agreement with the parents or guardians to place in accordance with regulations adopted by the Board. Each local board shall review the cases of children placed through an agreement or in its custody in accordance with the regulations adopted by the Board. Each local board shall review the cases of children placed through an agreement or in its custody on a planned basis to evaluate the current status and effectiveness (i) of the service plan's objectives and (ii) of the services being provided for each child in custody, which are directed toward the immediate care of and planning for permanency for the child, in accordance with policies of the Board.

The Department shall establish and maintain (a) a system to review and monitor compliance by local boards with the policies adopted by the Board and (b) a tracking system of every child in the care and custody of or placed by local boards in order to monitor the effectiveness of service planning, service objectives and service delivery by the local boards that shall be directed toward the achievement of permanency for children in foster care. *As part of the system to review and monitor compliance by local boards, the Department shall establish and maintain an online dashboard, to be updated quarterly, that is accessible by local boards. Such dashboard shall be categorized by local board and include information regarding (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 pursuant to § 63.2-913.1; (6) the number of children in foster care to whom a caseworker with a caseload exceeding the standard set forth in § 63.2-913.1 has been assigned; and (7) the turnover rate of entry-level and experienced foster care caseworkers. Local boards shall provide to the Department any data and information necessary to populate the dashboard.*

The Board shall adopt regulations necessary to implement the procedures and policies set out in this section. The Board shall establish as a goal that at any point in time the number of children who are in foster care for longer than twenty-four months shall not exceed 5,500 children.

§ 63.2-913.1. Caseload standard.

The Department shall, pursuant to Board regulations, establish a caseload standard that limits the amount of foster care cases that may be assigned to each foster care caseworker. Such caseload standard shall be reviewed and updated, as appropriate, annually on the basis of the time and work necessary to effectively manage each foster care case.

2. That the Commissioner of Social Services shall establish within the State Department of Social Services (Department) a director of foster care health and safety position. The director of foster care health and safety shall (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 the Department reviews children's residential facility placements for medical necessity; and (v) track health outcomes of children in foster care. On or before November 30 of each year, the director of foster care health and safety shall report to the Governor and the 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.

3. That the State Department of Social Services shall develop and implement a data-driven strategic plan, to be updated biennially, to improve the recruitment and retention of foster parents in the Commonwealth.

4. That the State Department of Social Services shall develop and implement a more reliable, structured, and comprehensive case review and quality improvement process to monitor and improve foster care services provided by local boards and departments of social services in the Commonwealth.

5. That the State Department of Social Services shall develop and implement an ongoing review process to monitor the placement of children by local boards of social services in children's residential facilities and ensure that such placements are warranted by medical necessity for congregate care.

6. That the State Department of Social Services shall develop and implement a process to (i) identify and review foster care cases in which the child has been in foster care for 24 months or longer; (ii) provide assistance to local boards and departments of social services to find a permanent home for such children; and (iii) conduct follow-up reviews of such cases annually to ensure that the local board and department of social services continue to make diligent efforts to secure a permanent home for such children.