

# 15

## DEVELOPING FOSTER CARE PLAN

### TABLE OF CONTENTS

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<b>15.1</b>	<b>Introduction .....</b>	<b>3</b>
<b>15.2</b>	<b>Framework .....</b>	<b>4</b>
15.2.1	Practice principles .....	4
15.2.2	Legal citations .....	5
<b>15.3</b>	<b>Engaging family and key partners in developing the foster care plan .....</b>	<b>6</b>
<b>15.4</b>	<b>Foster care plan format requirements.....</b>	<b>7</b>
<b>15.5</b>	<b>What shall be included in foster care plan .....</b>	<b>7</b>
15.5.1	Part A of the foster care plan.....	7
15.5.2	Part B of the foster care plan.....	11
<b>15.6</b>	<b>Completion of foster care plan and submission to court .....</b>	<b>11</b>
<b>15.7</b>	<b>Distribution of foster care plan.....</b>	<b>12</b>
<b>15.8</b>	<b>Dispositional hearing to review foster care plan.....</b>	<b>12</b>
<b>15.9</b>	<b>When new foster care plan is required .....</b>	<b>13</b>
<b>15.10</b>	<b>Developing the plan when goal is changed to Adoption .....</b>	<b>14</b>
15.10.1	Information needed .....	14
15.10.2	Submitting materials to court when goal is changed to Adoption .....	15
<b>15.11</b>	<b>When child returns to foster care .....</b>	<b>17</b>
<b>15.12</b>	<b>Appeals and fair hearings for specific foster care services .....</b>	<b>17</b>
15.12.1	When hearings may be granted for foster care services .....	17
15.12.2	Providing written notice .....	19
15.12.3	Request for appeals .....	20
15.12.4	Validating the appeal.....	20
15.12.5	Summary of Facts .....	21

15.12.6	Administrative Hearing .....	23
15.12.7	Withdrawal statement.....	24
15.12.8	Appeal to Circuit Court .....	25

# 15

## DEVELOPING FOSTER CARE PLAN

### 15.1 Introduction

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The active involvement of parents, prior custodians, relatives, foster and adoptive families, and other significant individuals in developing and implementing service plans with the child or youth, is integral to creating realistic, family and youth-driven plans. When families are fully engaged in these processes, there is increased likelihood that the service and transition plan activities and objectives will be successfully completed.

There shall be a foster care plan for every child in foster care. Federal and state law require that the safety of the child shall be the paramount concern in service planning ([§ 16.1-281](#)).

To help children achieve permanency, careful service planning is essential. Service workers provide assistance to families in very complex and often emotionally-laden situations, with unique desired outcomes. Intervening appropriately increases the likelihood of the service worker's interventions helping everyone to accomplish their goals and increasing the child's safety and well-being.

Service planning is fundamental to effectively serving children and families. Good service planning requires a comprehensive assessment as the basis for the plan. It also involves carefully thinking through the best course of action to achieve a goal and requires a series of steps that shall be executed in proper order. The following steps should involve the child, family, and other significant individuals as appropriate:

- Define the problem or need to be addressed.
- Gather and consider comprehensive information to be sure the nature and causes of the problem or need are fully understood, and to identify the strengths and resources available to the child and family to address the problem or need.
- Clarify what needs to be achieved and define concrete ends to be achieved (objectives).

- Discuss and consider possible courses of action that could achieve the desired ends and choose the most appropriate actions.
- Identify who will do what, how they will do it, and by when it will be accomplished.
- Regularly assess if the actions are successful and reassess whether the ends, actions, or persons responsible for the actions needs to be changed.

Finally, foster care plans fulfill court requirements, provide necessary documentation, and help ensure program and fiscal accountability.<sup>1</sup>

## 15.2 Framework

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The local department of social services (LDSS) shall use federal and state legal requirements, and should use sound practice principles and desired outcomes to guide decision making in developing the service plan.

### 15.2.1 Practice principles

Three fundamental principles in Virginia's Children's Services System Practice Model provide the philosophical basis and guide practice for decision making on developing service plans:

#### **First, we believe in family, child, and youth-driven practice.**

- Children and families will be treated with dignity and respect. The voices of children, youth, and parents are heard, valued, and considered in the decision making regarding safety, permanency, and well-being, as well as in service and educational planning and in placement decisions.
- Each individual's right to self-determination will be respected within the limits of established community standards and laws.
- Family members are the experts about their own families. It is our responsibility to understand children, youth, and families within the context of their own family rules, traditions, history, and culture.
- We engage families in a deliberate manner. Through collaboration with families, we develop and implement creative, individual solutions that build on their strengths to meet their needs. Engagement is the primary door through which we help youth and families make positive changes.

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<sup>1</sup> Adapted from: Rycus, J.S. and Hughes, R.C.; "Field Guide to Child Welfare: Case-planning and Family-centered Casework" Vol. II; Child Welfare League of America, 1998

**Second, we believe in partnering with others to support child and family success in a system that is family-focused, child-centered, and community-based.**

- We are committed to working across agencies, stakeholder groups, and communities to improve outcomes for the children, youth, and families we serve.

**Third, we believe that how we do our work is as important as the work we do.**

- As we work with children, families, and their teams, we clearly share with them our purpose, role, concerns, decisions, and responsibility.

### 15.2.2 Legal citations

The legal framework and specific requirements for developing service plans are delineated in federal and state law. See the law for complete language by clicking on the citation.

- **Requiring foster care plan**
  - [§ 16.1-281](#)
- **Involving parents in the foster care plan**
  - [§ 16.1-281](#)
- **Involving the child in the foster care plan**
  - [§ 16.1-281](#)
- **Developing a youth-directed transition plan**
  - [Social Security Act, Title IV, § 475 \(5\) \(H\) \[42 USC 675\]](#)
- **Providing for family and foster parent participation in the family assessment and planning team (FAPT)**
  - [§ 2.2-5208](#)
- **Components of the foster care plan**
  - [Social Security Act, Title IV, § 475 \(1\) \[42 USC 675\]](#).
  - [§ 16.1-281](#)
- **Foster care plan sent by court**

- [§ 16.1-281](#)
- **Hearing by court to review and approve plan**
- [§ 16.1-281](#)

### **15.3 Engaging family and key partners in developing the foster care plan**

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The service worker responsible for case management shall involve the parents or prior custodians in developing the foster care plan by conducting a family partnership meeting (FPM). The service worker shall also involve a child who is 12 years of age or older in the development of the plan and, at the option of the child, up to two (2) members of the planning team who are chosen by the child and are not the service worker or foster parent. A child who is under 12 years of age may be involved in the development of the plan if such involvement is consistent with the best interest of the child. ([§ 16.1-281](#)).

The service worker shall also involve the foster and adoptive parents in service planning, as well as family members and other individuals identified by the child or family as significant to them and whose presence in the service planning meetings they desire. The service worker should attempt to involve other service providers and agencies that are involved with the child and family.

Actively engaging the child, family members, and other significant individuals leads to service plans and decisions that are more individualized and relevant to the family, thus increasing the likelihood of implementation and creating more opportunity for lasting change (see [Section 2.6](#)). Family members and other individuals who have significant relationships with the child and family may be able to provide important resources and supports for inclusion in the service plan (see [Section 2.4](#)).

Parents do not have to be included in the foster care plan when parental rights have been terminated or the LDSS has made diligent efforts to locate the parent(s) and such parent(s) cannot be located ([§ 16.1-281](#)).

The service worker may refer the child and family to the Family Assessment and Planning Team (FAPT) for assistance in identifying their strengths, needs, services, and resources. The service worker's decision to refer a case to the FAPT should be guided by local Community Policy and Management Team (CPMT) procedures for referral.

When developing the foster care plan, the LDSS shall inform, in writing, individuals who are recipients of a service in the foster care plan and individuals who are requesting a service in the plan of their right to appeal the denial of specific foster care services as defined in [Section 15.12.1](#), or the delay of a decision regarding such foster care services, that are delineated in the foster care plan and approved by the court. If the service is not in an approved service plan, then the denial is not an appealable denial of

a claim for foster care services. The LDSS shall inform the individual that the LDSS will mail the individual written notice at least ten (10) days before any action to discontinue, terminate, suspend, or change such foster care services. The individual may request a hearing within thirty (30) days of their receiving written notice of the denial. See [Section 15.12.2](#) on providing written notice.

## 15.4 Foster care plan format requirements

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The LDSS shall complete the Foster Care Plan in OASIS. The LDSS may use the Individual Family Service Plan (IFSP) developed by the FAPT if the plan meets the requirements of the Foster Care Plan listed in the following sections and is accepted by the court as a substitute ([§ 16.1-281](#)).

## 15.5 What shall be included in foster care plan

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The foster care plan should describe the complement of services and supports required to achieve the permanency goal for the child. The plan should address the unique needs of the child and family and should build upon their strengths, resources, and natural supports, as identified through the comprehensive child and family assessment process (see [Section 5](#)). Services should be for a planned period of time to meet specific needs.

The foster care plan shall directly address any needs or conditions that led to the placement of the child as described in the Child Protective Services Safety Assessment and the Foster Care Initial Assessment as needing remediation. It shall also describe appropriate services and supports that will be offered to the child in foster care and his or her family to address these needs. These services and supports shall be documented in the child's foster care plan or Individual Family Service Plan (IFSP).

The Code of Virginia ([§ 16.1-281](#)) and federal law describe the requirements for the foster care plan.

### 15.5.1 Part A of the foster care plan

Part A shall include:

- The reason the child came into care and why placement is needed.
- The services offered to prevent removal of the child from the home of the birth parents/prior custodian.
- The child's situation at the time of placement in relation to the child's family. If the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parent(s), or in a different State, the service plan shall explain the reasons why such a placement is appropriate and is in the best interests of the child;

- Assurances that if the child has been placed in foster care in a State outside the state in which the his parent(s) are located (usually this will be Virginia), an agency caseworker on the staff of the Virginia LDSS, or the State in which the child has been placed, or of a private agency under contract with Virginia, visits the child and submits a report on the visit to the State where the home of the child's parent(s) is located;
- The appropriateness of the foster care goal and all services provided to the child, family and foster parents as they relate to the reasons the child entered care and the services provided to enhance the child's safety and well-being while in care.
- The most current and accurate information available regarding the child's education status shall be documented in the education screens in OASIS and a printed Education Report shall be attached to the child's foster care plan. The child's education report includes:
  - The child's state testing identifier (STI) Number
  - The child's current school, address, and grade
  - The child's current school performance and whether the child has an Individualized education plan or 504 plan.
  - Information regarding the Best Interest Determination meeting.
- The most current and accurate information available regarding the child's health shall be documented in the health information screens in OASIS and a printed Health Report shall be attached to the child's foster care plan. The Health Report is based on all available health assessments, evaluations, and reports by qualified health care professionals who are knowledgeable of the child's health and/or health history. The Health Report includes:
  - Child's current health status:
    - Whether the child's immunizations are up-to-date as of the child's last medical appointment. If the immunizations are not current, describe actions being taken so they are current.
    - Child's current health status and conditions.
  - The names, addresses, and phone numbers of the child's current health care providers, including all medical, specialty, pharmacy, dental, mental health, substance use disorder, clinic, urgent care, emergency room, and hospital providers, as appropriate.
  - The child's medications, including psychotropic medications.

- List of other health information in the child's case record, including a record of the child's immunizations.
- Any other relevant health information concerning the child.
- The nature of the placement or placements that will be provided the child. This shall include a description of the type of home or facility in which the child is to be placed.
- A discussion of the appropriateness of the placement and how the placement will provide a safe environment for the child. This should also include decisions made during the FPM, efforts made to place the child with extended family members, efforts made to place the child in the least restrictive (most family like) setting available that is in the best interest of the child and can meet any special needs of the child, and the efforts made to place the child in close proximity to the parent's home.
- An assessment of the stability of each placement, the services provided or plans for services to be provided to address placement instability or to prevent disruption of the placement, and a description of other placements that were considered for the child, if any, and reasons why such other placements were not provided.
- A discussion regarding normalcy and how it is being implemented specific to the child ([see section 6.8](#)).
- A discussion of how any court orders in respect to this child were carried out.
- The needs that should be met to achieve the goal for the child. Needs should be identified for the child, the birth parents/prior custodians, and foster parents.
- A plan for visitation between the child and parent/prior custodians. If siblings are separated, a plan for visitation and communication with siblings shall also be included. The visitation or communication plan should take into account the wishes of the child. The foster care plan should include specific objectives for parents including frequency and location of visits and expected observations that would demonstrate adequate parenting and state any restrictions or limitations to the visits or communications. The communications may include, but are not limited to, face-to-face visits, telephone calls, and email correspondence.
- The permanency goal selected for the child and family including the rationale as to why this goal is selected.

- A concurrent permanency plan selected for the child and the needs and services related to achieving the concurrent goal.
- The program, care, services, and support which will be offered and a discussion of how these services will meet the specific needs of the child, parents/prior custodian, and foster parents. For teens 14 or over, the specific independent living services to meet the needs of the youth to assist the youth, family, and foster family or care provider in the youth's transition to independence. A copy of the youth's transition plan shall also be printed and attached to the foster care plan.
- Prior to and within the 90 days prior to the older youth turning age 18 or discontinuing foster care services, the LDSS, and other individuals as appropriate, will offer assistance to the youth to update his foster care plan, or independent living services and transition plan that is attached to the foster care plan, focusing specifically on the independent living services, skills, and resources the youth will need to transition from foster care and become self-sufficient and independent. The LDSS shall allow and assist the youth in directing the development of the updated plan and shall include all the information deemed necessary by the youth and consistent with the youth's need for safety and well-being.
- Target dates for completion of the services provided to the child, the parents/prior custodians, and foster parents.
- Responsibilities, including conduct and support, which will be sought from the parents or prior custodians, including target dates for completion.
- Responsibilities assigned to the child, foster parents, adoptive parents, or other provider with target dates for completion.
- The projected date for goal achievement.
- Description of how the child, parents or prior custodians, foster parents or other providers, and any additional individuals who are part of the child's or family's social support network were involved in the planning process. If the child and parents/prior custodians were not involved, the reasons shall be explained.
- Information on an individual's right to appeal LDSS decisions on specific services and placement in the foster care service plan approved by the court as defined in [Section 15.12.1](#).

### 15.5.2 Part B of the foster care plan

A separate section of the foster care plan or the IFSP shall be completed when the child cannot be returned to the parents or prior custodians within a practicable time (§ 16.1-281). Additional information on permanency efforts may also be documented in this section of the foster care plan.

Complete Part B of the foster care plan form, based on the goal for the child. Describe fully the reasons the child cannot return home within a practicable time, consistent with the child's best interests.

- Describe the opportunities and plans for achieving the following goals and the reasons these goals are or are not feasible:
  - Achieving Adoption within the shortest practicable time.
  - Achieving Placement with Relatives if a subsequent transfer of custody is planned.

If the goals of Return Home, Adoption, or Placement with Relatives with a subsequent custody transfer are not feasible, and the child is 16 years of age or older, the reasons have been described for one of the following:

- Explain why Permanent Foster Care is the plan for the child, describing the significant relationship with the foster parent(s) and how the child's needs will be met on a long-term basis;
- Explain why Another Planned Permanent Living Arrangement is the plan for the child, describing the child's severe, chronic, and disabling condition that is emotional, physical, or neurological in nature and that requires long-term residential treatment of six (6) months or longer. Explain why all other goals have been ruled out.

## 15.6 Completion of foster care plan and submission to court

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A full foster care plan on all children shall be completed in OASIS and, if the IFSP is used, it shall be filed in the case record. The foster care plan shall be completed:

- Within 45 days of custody/placement (whichever comes first) of a child through court commitment, non-custodial foster care agreement, or a permanent entrustment agreement; or
- **Within 30 days** of signing a temporary entrustment for a placement of 90 days or more; the plan is the basis for requesting court approval of the entrustment.

The completed foster care plan shall be submitted to court within 45 days of custody or placement, unless the child:

- Is living in his own home.
- Is in an adoptive placement.
- Has had a plan previously filed with the court as a result of the agency's seeking court approval of a temporary entrustment or non-custodial foster care placement.

The judge may extend the time for submitting the foster care plan to the court an additional 60 days. The LDSS shall still have a completed foster care plan in the record within the 45 days of placement to comply with federal regulations.

For a temporary entrustment of 90 days or more, the plan shall be submitted to the court **within 30 days** of signing the agreement.

### **15.7 Distribution of foster care plan**

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The worker submits the foster care plan transmittal with the names and addresses of the following individuals along with a copy of the entire foster care plan to the court. The court is responsible for forwarding the plan to:

- The attorney (GAL) for the child.
- The child's parent(s) or any other person standing in loco parentis, unless they have been permanently relieved of the care and custody of the child.
- Other persons the court deems appropriate, such as the court appointed special advocate.

A copy of the foster care plan, including the section describing why a child cannot be returned home (Part B of the foster care plan as described in [Section 15.5.2](#)) is sent by the court to the foster and/or adoptive parent. The LDSS shall send a copy of the foster care plan to the new placement provider, when a placement changes.

### **15.8 Dispositional hearing to review foster care plan**

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The court will review and approve the plan at the dispositional hearing occurring within 60 days of when the child entered foster care. If a child is entrusted, the court will approve the plan at the hearing when the entrustment agreement is approved. This hearing is considered to be the first opportunity for the foster care plan to be heard in court and, therefore, it is the first time that the status of the case is reviewed in court.

The court and the LDSS shall make reasonable efforts to ensure that parents and foster and adoptive parents receive notice of the dispositional hearing. In addition, the transmittal submitted to the court with the foster care plan shall include the names and addresses of foster and pre-adoptive parents and relative caregivers who are to receive notification by the court of the date of the hearing and of their right to be heard. The status of each foster care case shall be reviewed no less than once every six (6) months by a court or an administrative review ([Social Security Act, Title IV, § 475 \(5\) \(b\) \[42 USC 675\]](#)). These periodic reviews shall occur on a time frame that begins on the date the child is determined to have entered foster care (see [Section 3.3](#)).

This same section of federal law also requires that “notice and an opportunity to be heard shall be given to foster parents, pre-adoptive parents, and relative caregivers.” The service worker should provide and discuss with these individuals a copy of the brochure [Adoption and Safe Families Act: Applying the Notice and Right to Be Heard Provision in Virginia's Juvenile and Domestic Relations District Courts](#). This brochure explains the requirements of timely notice and opportunity to be heard in six month review hearings and permanency hearings held with respect to the child in their care. It explains they do not have the right to standing as a party to the case.

The LDSS shall complete the Foster Care Transmittal Form (DC-552) and shall include the name and contact information of the foster and adoptive parent on the form where indicated. The foster and adoptive family may be present in court for the review of the foster care plan. However, they will be excluded from the courtroom for that part of the hearing regarding the allegations of abuse and neglect.

At this hearing, the foster care review hearing date is set to occur within four (4) months and appropriate individuals including foster, adoptive, and foster and adoptive parents are provided notice to attend the hearing.

Because of the requirement to hold a permanency planning hearing 12 months after placement, parents should be informed no later than the dispositional hearing of:

- What the LDSS expects of them.
- The importance of assisting in developing and cooperating with the foster care plan requirements.
- The existence of a concurrent permanency plan goal and rationale for such a goal should the child not be able to return home.
- The length of time they have to make changes necessary for the return of their child(ren).

## **15.9 When new foster care plan is required**

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After the initial foster care plan is developed, a new plan is required:

- As a result of a change in goal (this plan shall be submitted to the court).
- For any permanency planning hearing.
- When a child returns from a commitment to the Department of Juvenile Justice.
- When a youth ages out of foster care and enters into the Fostering Futures Program.

A FPM should be convened prior to the development of the new foster care plan in each of these situations.

## **15.10 Developing the plan when goal is changed to Adoption**

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At the permanency planning hearing, or at any other hearing that results in the decision to change the child's goal to adoption, the LDSS shall file a petition with the court 30 days prior to the hearing to terminate parental rights, along with the foster care plan.

### **15.10.1 Information needed**

When the goal of Adoption is selected, consultation between the foster care and adoption staff shall occur. Additional information may need to be gathered. This information is critical, as it will serve as a basis for identifying adoption services, will be used in the selection of an appropriate adoptive home, and will be the only information available to the child after adoption about the child's birth family and background. If any of this information is missing from the foster care record, one of the services that shall be identified on the new plan will be to obtain the missing information. The additional information that may need to be gathered includes:

- Detailed information about birth, medical, and developmental history of the child and family, including genetic information.
- Current information on health, developmental, and educational functioning of the child, and recommendations for any necessary follow-up treatment or further check-ups with specialists. If medicals have not been done in the last 12 months, the adoptive placement plan shall reflect that these will be obtained once termination of parental rights has been achieved.
- Information from foster parents about the child's attitudes, habits, and daily routines, their methods of discipline, and pertinent observations as to the child's reactions and relationships in their home, likes and dislikes, nicknames, and favorite toys.
- Information regarding whether the siblings are presently together in foster care, and the relationships of the siblings to each other.

- Information about the child's relationship with the birth family, including extended relatives and an assessment of the impact of termination of parental rights on the child and family.
- Information about the child's relationship with his or her birth family and the child's desire to maintain contact with his parent(s) should be used to consider the possibility of developing a PACCA for the child and, if applicable, should be used in discussing the possibility of a PACCA with the prospective adoptive parents.
- Information about the child's relationship with the foster parents to assess the level of bonding to determine whether the foster parents should be considered as an adoptive resource for the child.

#### **15.10.2 Submitting materials to court when goal is changed to Adoption**

When submitting a new foster care plan, the LDSS shall submit the following documents to the court **30 days prior** to the scheduled foster care review hearing: requesting a change to the goal of Adoption

- A petition for a foster care review hearing.
- A Foster Care Plan Review Form which shall include any updates to the initial Foster Care Plan.
- A Foster Care Plan Transmittal listing individuals who should receive a copy of the petition and/or be notified of the hearing. These individuals include the child, if age 12 or over, the parents, guardian, or prior custodian, the Guardian Ad Litem, the foster parents, the LDSS, and any other interested parties identified by the LDSS or those the court directs.

The court will review progress toward meeting the foster care goal, approve changes to the plan, enter any appropriate orders, and determine whether reasonable efforts have been made to return the child home, if that is the goal, or to finalize another permanent placement.

The foster care plan shall include:

- A statement and documentation that the goal of Adoption is in the best interest of the child; this is put in Part B or a separate section of the foster care plan.
- The reasons for selecting the goal of Adoption; this is put in Part B or a separate section of the foster care plan (Part A).

- Ongoing services that will be provided to the child, birth parents, and the foster parents.
- The responsibilities of the parents or prior custodian included in the prior assessment and service plan and whether they have or have not met them; this is put in Part B or a separate section of the foster care plan. These responsibilities shall correspond with the responsibilities identified in the initial or any updated foster care plan.
- The specific action planned to identify and select an adoptive family and the specific services to be provided to prepare the child for an adoptive family. This includes services to:
  - Build trust with the worker who will make the placement.
  - Gather all medical, psychological, social, and family background information for the child's permanent adoption record.
  - Help the child deal with the past and be committed to an adoptive placement.
  - Discuss with the child, adoptive parents, and biological parents regarding their desires for post-adoption contact and the availability of a PACCA.
  - Pre-placement services and activities with adoptive parents.
  - Services to meet the child's needs while in foster care waiting for adoptive placement.
  - Registration with AREVA or other adoption exchanges as well as other recruitment efforts (see [Section 9.8](#) for information about AREVA).
  - Assessment of the child's special needs for purposes of adoption assistance.
  - Services for the birth parents including, but not limited to:
    - Services to help them separate from the child and support an adoptive placement.
    - Services to help parents deal with their loss, guilt, and other feelings related to the child.
  - Services for the foster parent including, but not limited to:
    - Services to gather pertinent information on the child's development and behavior.

- Assessment of the foster parents as a primary adoptive resource for the child or services to help the child move to an adoptive placement.
- Services that will assist the foster parents in meeting the needs of the child including their willingness and desire to consider a PACCA if they are to be the adoptive parents.

The specific services to be provided to the child and adoptive family after adoptive placement are not provided until after termination of parental rights has occurred. Upon submission of the plan and registration with AREVA, the services should be identified in the plan and offered.

### **15.11 When child returns to foster care**

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When a child's legal custody has been returned to his parents or prior custodians from the LDSS and the child subsequently returns to the custody of the LDSS, this is a new foster care episode. A new foster care plan shall be completed and all requirements for foster care plans met.

A child is considered to be on a trial home visit when he or she returns home to his parents or prior custodians from whom he was removed, but remains in the custody of the LDSS. When a child is removed from a trial home visit and returned to a foster care placement and the trial home visit exceeded six (6) months without a court order specifically extending the trial home visit, then the child is considered to be in a new foster care episode. A new foster care plan shall be completed and the timeline for court hearings and panel reviews begins from the date this new episode begins.

Children on trial home visits for six (6) months or less who are removed from the trial home visit continue with the existing foster care episode and the service planning and court timelines already in place.

### **15.12 Appeals and fair hearings for specific foster care services**

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Appeals shall be processed in accordance with Virginia legal requirements (§ [63.2-915](#) and [22 VAC 40-201-115](#)) and procedures established by the Virginia Board of Social Services. For complete information, see [Appeals and Fair Hearings Unit Procedure Manual 2013](#) or current manual if updated.

#### **15.12.1 When hearings may be granted for foster care services**

Any individual whose claim for benefits available pursuant to 42 U.S.C. § 670 et seq. or whose claim for foster care services pursuant to § [63.2-905](#) is denied or is not acted upon by the local department with reasonable promptness shall have the right to appeal to the Commissioner (§ [63.2-915](#)). Denied means the refusal to provide a claim for benefits ([22 VAC 40-201-10](#)).

A hearing may be granted when the claim for foster care services includes the following services or placements:

- Foster care basic maintenance and enhanced maintenance payments.
- Foster care services in a foster care plan, specifically:
  - Services in a foster care plan approved by the court.
  - Foster care services identified in an individual family service plan developed by a family assessment and planning team or other multi-disciplinary team and approved by the community policy and management team, pursuant to the Children's Services Act.
  - Services in a transition plan for independent living services.
  - Foster care prevention services in a prevention services plan.

Services shall be delineated in the services section of a written and approved foster care plan. If the service or placement is not in an approved foster care plan, then the denial is not subject to appeal.

- Placement of a child through a non-custodial foster care agreement between the parents or guardians of the child and the LDSS, where legal custody remains with the parents or guardians.
- Placement of a child for adoption when an approved family is available outside the locality with the legal custody of the child, in accordance with [Social Security Act, Title IV, § 471 \(a\) \(23\) \[42 USC 673\] \(22 VAC 40-201-10\)](#).

A hearing need not be granted when the claim for foster care services includes, but is not limited to:

- Automatic maintenance payment adjustments required by state or federal law, unless the reason for the individual appeal is incorrect computation of the maintenance amount ([22 VAC 40-201-115 B](#)).
- Decisions related to the placement of a child in foster care with a specific individual or family. Placement decisions of local boards are final when in accordance with the relevant provisions of title 16.1 of the Code of Virginia, except for the two placement decisions delineated above ([22 VAC 40-201-115 C](#)).

The individual shall be allowed to request a hearing within 30 days after receiving written notice of the denial of a claim for benefit. The written notice shall inform the individual of the 30 day time limit to request a hearing. Within ninety (90) days of the

individual's request for a hearing, the hearing shall be conducted, a decision reached, and the individual notified of the decision ([22 VAC 40-201-115 G](#)).

### 15.12.2 Providing written notice

The LDSS, or in those cases where the LDSS is not involved (i.e., the licensed child placing agency (LCPA), the family assessment and planning team (FAPT), or other multi-disciplinary team), shall provide timely notice of a decision to discontinue, terminate, suspend, or change foster care services or placements for the child as defined in [Section 15.12.1](#). Timely notice means the notice is mailed at least ten (10) days before the date the action becomes effective ([22 VAC 40-201-115 F](#)).

The LDSS, or the LCPA, FAPT or other multi-disciplinary team, shall inform the individual in writing of the right to appeal the denial of benefit or the delay of a decision regarding a benefit at the time:

- The applicable foster care plan is written.
- Any action affecting the claim for benefit.
- A child comes into foster care. Written notice shall be provided to the birth parents or caretakers.
- The foster care agreement is signed. Written notice shall be provided to the guardian ad litem and to the foster parents.

The written notice shall include:

- The individual's right to a hearing.
- The method by which the individual may obtain a hearing.
- That the individual may be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesperson, or the individual may represent self ([22 VAC 40-201-115 E](#)).

If the individual requests a hearing after receiving the written notice of the decision and at least **ten (10) days before** the date the action becomes effective, the benefit shall not be suspended, reduced, discontinued or terminated until a decision is rendered after a hearing, unless:

- A determination is made at the hearing that the sole issue is one of state or federal law or policy, or change in state or federal law, and not one of incorrect benefit computation;

- A change affecting the individual's benefit occurs while the hearing decision is pending and the individual fails to request a hearing after notice of the change; or
- The individual specifically requests that he not receive continued benefits pending a hearing decision.

Such benefit is subject to recovery if the action is sustained at the hearing (22 VAC 40-201-115 F).

### 15.12.3 Request for appeals

The individual shall be allowed to request a fair hearing within 30 days after receiving written notice of the denial of foster care services as defined in [Section 15.12.1](#). A person acting on behalf of the individual (e.g., a relative, friend, an attorney, or other spokesperson) may act as their authorized representative and request the hearing ([See Family Services Appeal Request Form](#)).

Requests for appeals must be submitted in writing to:

Appeals and Fair Hearings Unit  
Virginia Department of Social Services  
801 East Main Street  
Richmond, VA 23219-2901

The LDSS must not prejudice or limit the individual's right to appeal a denial. The LDSS must assist the individual in submitting an appeal or in preparing the individual's case, if necessary. The LDSS has an affirmative duty to provide information and referral services to help the individual make use of any legal services available in the community.

### 15.12.4 Validating the appeal

The LDSS will receive a copy of the individual's appeal request and a validation form from the Appeals and Fair Hearings Unit. The LDSS must specify:

- The action taken by the LDSS.
- The date of the notice of action.
- Whether or not the benefit has been continued during the appeal process.

The LDSS must return the completed validation form and a copy of the Notice of Action within **five (5) working days** to the hearing officer.

When the hearing officer determines the appeal request is valid, the LDSS and the individual are notified in writing of the date for the Administrative Hearing. Written

notice of the hearing date is provided at least **ten (10) days** prior to the date for the Administrative Hearing. The notice includes information about the appeal rights of the individual. The hearing is scheduled and conducted at a time, date, and place convenient to the individual. It is usually conducted by teleconference. The hearing officer will order continuation of benefit where required, if the LDSS has not already taken such action.

If the individual requests a hearing within ten (10) days after the date the action becomes effective, the hearing officer may require that the benefit shall be reinstated and continued until a decision is rendered at the hearing, unless:

- The individual specifically requests that continued benefit not be paid pending the hearing decision;
- In any case where action was taken without timely notice and the individual requests a hearing within ten (10) days of the mailing of the notice of the action, and a determination is made at the hearing that the sole issue is one of state or federal law or policy, and the hearing officer determines that the action resulted from other than the application of state or federal law or policy, or a change in state or federal law, unless the individual specifically requests that he not receive continued benefits pending the hearing decision ([22 VAC 40-201-115 H](#)).

When the hearing officer determines the appeal request is invalid, the LDSS and individual receive written notification with an explanation of the reason for the determination that an administrative appeal hearing cannot be granted.

A copy of the completed validation form, the Notice of Action, and the written notification from the hearing officer shall be placed in the child's foster care paper case record.

For complete information, see [Appeals and Fair Hearings Unit Procedure Manual 2013](#) or current manual if updated.

### **15.12.5 Summary of Facts**

Upon receiving notification of the scheduled administrative hearing, the LDSS must prepare a Summary of Facts of the case ([See Summary of Facts Form](#)). A copy of the summary should be received by the hearing officer and the individual at least **five (5) days** prior to the hearing.

The summary should include:

- Identifying case information.
  - Name of LDSS.

- Name and address of child and individual.
- Foster care case number.
- All relevant information about the action being appealed.
  - Statement of issue (e.g., the specific foster care service or placement that was denied as defined in [Section 15.12.1](#); the determination by the LDSS; the type, amount, and date of maintenance payment, service, and/or placement that was denied; the alleged failure of the LDSS to act promptly).
  - Logical, chronological sequence of events which led to the action taken by the LDSS (e.g., specific dates; actions that occurred or did not occur; LDSS actions to resolve the issues). The LDSS should assume that the reader is not familiar with the facts of the case or the program policy.
  - Description of specific calculations and policy or guidance used to determine amounts, when applicable. If specific figures are disputed, the reasons underlying the dispute must be addressed.
  - The individual's request for and date of appeal, including quoted words from the individual regarding the issue and their reasons for appealing.
- Specific citation(s) and language quoted from law, policy, and/or the guidance manual on which LDSS action was based.
- Relevant provisions of the service plan or agreement, as applicable (e.g., number of hours, number of service units, period of time authorized, provisions).
- Copies of all other relevant documentation regarding the action being appealed (e.g., documents submitted, notices, forms, letters).
- Signature of LDSS Director and date.

The Summary of Facts, including all attachments, must be signed and sent to the individual, their representative if any, and the hearing officer.

A copy of the Summary of Facts shall be placed in the child's foster care paper case record.

For complete information, see [Appeals and Fair Hearings Unit Procedure Manual 2013](#) or current manual if updated.

### 15.12.6 Administrative Hearing

The formal administrative hearing is conducted by the VDSS hearing officer. The hearing officer is an impartial person charged by the Commissioner to hear appeals and decide if the LDSS followed policy and procedure in making a decision. The hearing shall include consideration of the denial of a claim for benefits or the failure of the LDSS to act with reasonable promptness on a request for a benefit for the individual ([22 VAC 40-201-115 K](#)).

At the hearing, the individual and/or their authorized representative will have adequate opportunity to:

- Examine all documents and records used at the hearing, including information relied upon by the LDSS, the LCPA, the FAPT, or other multi-disciplinary team in considering the request for a benefit to the extent that the information does not violate confidentiality requirements.
- Present the case.
- Bring witnesses.
- Establish all pertinent facts and circumstances.
- Advance any arguments without undue interference.
- Question or refute any testimony or evidence, including the opportunity to confront and cross-examine witnesses ([22 VAC 40-201-115 L](#)).

The LDSS will have the opportunity to:

- Clarify or modify its statements contained in the Summary of Facts.
- Question the individual and his witnesses on the salient issue(s).
- Examine all documents submitted by the individual or their authorized representative.

Only relevant evidence related to the issue(s) being appealed is admissible at the hearing.

There is a legal presumption that the LDSS acted in accordance with law and policy and the burden of proof is on the individual to demonstrate LDSS error.

The decision of the hearing officer shall be based exclusively on the evidence and other materials (i.e., documents or testaments) introduced at the hearing. Evidence includes all applicable laws, regulations, policies, and guidance manuals.

The hearing officer shall notify the LDSS and individuals in writing of its decision on the appeal within 90 days following the date the appeal request was received by the VDSS, except when a postponement was requested. If the hearing was postponed, the time limit will be extended for as many days as the hearing was postponed. The decision shall consist of a memorandum decision summarizing the facts and identifying the state or federal law, regulation, policy and guidance supporting the decision.

The decision of the hearing officer is final and binding when the decision is mailed to the LDSS and the individual. When the hearing decision is favorable to the individual, the LDSS, LCPA, FAPT or other multi-disciplinary team shall promptly begin the process to provide the requested service, or in the case of foster care maintenance, make corrective payments retroactively to the date the incorrect action was taken, unless foster care maintenance payments were continued pending the hearing decision. The LDSS must ensure that administrative action is taken to implement the hearing officer's decision no later than **ten (10) working days** following the date of the decision, regardless of whether the individual requests further review by the Circuit Court. See the [Appeals and Fair Hearings Unit Procedure Manual 2013](#) for exceptions to implementation within this time period. After corrective action is taken, the LDSS must notify the individual and the hearing officer in writing that the agency has complied with the decision.

All documents from the hearing, the written memorandum decision of the hearing officer, and the LDSS written notice documenting compliance with the decision, when applicable, shall be placed in the child's foster care paper case record.

For complete information, see [Appeals and Fair Hearings Unit Procedure Manual 2013](#) or current manual if updated.

#### **15.12.7 Withdrawal statement**

If the LDSS and individual resolve the issue at any time after the Appeals and Fair Hearings Unit receives the individuals' request for an Administrative Review Hearing, the individual must provide a written statement withdrawing the appeal request. The withdrawal statement is sent to the hearing officer with a copy to the LDSS. The withdrawal statement shall be placed in the child's foster care paper case record.

When the request is withdrawn by the individual in writing, or when the request is abandoned, the hearing officer may deny or dismiss the request for a hearing. Abandonment is deemed to have occurred if the individual without good cause fails to appear by himself or by his authorized representative at the hearing scheduled for the individual ([22 VAC 40-201-115 J](#)).

### **15.12.8 Appeal to Circuit Court**

The individual aggrieved by the decision of the hearing officer may seek further review of the decision by the appropriate Circuit Court. The individual has thirty (30) days from the date of service (the date they actually received the hearing officer's decision or the date it was mailed to the individual, whichever occurred first) to provide notice of his intent to file an appeal with the circuit court.

Written notice of intent to appeal the hearing officer's decision must be sent to:

Commissioner  
Virginia Department of Social Services  
801 East Main Street  
Richmond, Virginia 23219-2901

In addition, the individual must file a written petition in Circuit Court in the locality where they live in order to perfect the appeal. The individual will not receive correspondence nor will their benefit continue as a result of the individual sending written notice to VDSS of their intent to appeal, as the hearing officer's decision is the final administrative action.