



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40- 35
Regulation title	Virginia Independence Program
Action title	Amend the Virginia Independence Program regulation by updating out-dated information and changing paternity identification requirements.
Date this document prepared	June 20, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of the proposed action is to amend the Virginia Independence Program regulation by changing state code citations that changed as a result of recodification, change terms from Aid to Families with Dependent Children (AFDC) to the current Temporary Assistance for Needy Families (TANF), update the definitions, remove obsolete language concerning the receipt of federal waivers, remove references to the Virginia Targeted Jobs Grant Program, update the exemptions from the Virginia Initiative for Employment not Welfare program, allow greater participation in educational activities when participating in community work experience, expand opportunities for hardship exceptions and address situations when an applicant for TANF names multiple possible putative fathers

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Pursuant to §63.2-217 of the Code of Virginia, the State Board of Social Services has authority to promulgate rules and regulations necessary for operation of all assistance programs. The amendments to the regulations are discretionary changes, but will make the regulations correct and more complete

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The AFDC program was replaced by the TANF program with passage of the Personal Responsibility and Work Opportunity Reconciliation Act. The term AFDC is therefore obsolete and needs to be updated.

The pertinent sections of the Virginia State Code regarding the TANF program were recodified. The state code citations in the regulation are out of date and need to be updated.

The exemptions from VIEW are being updated for consistency with state code. While all of the exemptions listed in state code were allowed in practice, they were not all listed in the regulation. Having a comprehensive list will make the regulation more complete and understandable.

Allowing greater participation in education activities for those participating in work experience will provide for better long-range outcomes for recipients of TANF.

A TANF recipient was terminated from assistance and filed suit over the loss of benefits, claiming that because she had named all of the possible putative fathers for her child on TANF, she was cooperating in establishing paternity and should not be terminated for not cooperating. It was determined that the regulation concerning cooperation in establishing paternity was not comprehensive and did not address the situation.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The regulation will be amend by changing state code citations that changed as a result of recodification, changing terms from Aid to Families with Dependent Children (AFDC) to the current Temporary Assistance for Needy Families (TANF), updating the VIEW exemptions and definitions, removing obsolete language concerning the receipt of federal waivers, removing references to the Virginia Targeted Jobs Grant Program, and addressing situations when an applicant for TANF names multiple possible putative fathers. If an applicant names multiple fathers as the father of the child, the applicant will be considered cooperating until five named fathers have been eliminated by genetic testing.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the

agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

There is no alternative to having correct and up to date code and program citations in the regulation.

For the changes concerning cooperation in establishing paternity, several alternatives have been considered. The regulation could remain the same, but would be incomplete and would not address situations in which there are multiple possible putative fathers for a child. Consideration was given to allowing the applicant to be considered cooperating until all possible putative fathers had been eliminated. That approach was rejected as it provided a way for the applicant to avoid providing information that would actually lead to the establishment of paternity. The proposed policy was chosen as a reasonable approach that balances the need to establish paternity and to provide a reasonable number of possible fathers to be named, in situations when the applicant does not know the identity of the father.

Consideration was given to maintaining only a partial list of exemptions from VIEW in the regulation, but updating the list provides more information to the public and is more comprehensive.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulation will strengthen personal responsibility and will lead to the establishment of more paternities. The establishment of paternity is important for families and children. Paternity creates a legal relationship between the father and the child. Paternity is required to make the father legally responsible for paying child support. Paternity may provide legal benefits for a child, such as a share of social security, disability or veterans benefits if the father dies, becomes disabled or is already deceased, rights to any inheritance from the father, and rights to the father's medical or insurance benefits.