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Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-325
Regulation title(s)	Fraud Reduction/Elimination Effort
Action title	Amend Regulation to Accurately Reflect Reimbursement Practices for Local Fraud Activities
Date this document prepared	April 19, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The regulation section pertaining to local reimbursement of fraud activities is revised to reflect the current practice. Beginning in state fiscal year 2014, the Department moved to a single funding-pool for all local administrative activities. As a result, the language in the current regulation does not accurately reflect the change in local funding allocations and reimbursements. Additionally the funding methodology for the allocation to localities is being specified in the regulation.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

FREE – Fraud Reduction and Elimination Effort

There are no definitions or technical terms used in the proposed regulation that are not contained in the definitions of the proposed regulation.

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The State Board of Social Services took final on Fraud Reduction/Elimination Effort on April 19, 2017.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

The Code of Virginia at § 63.2-217 gives the State Board of Social Services the authority to promulgate regulations necessary to carry out § 63.2 of the Code. The Code of Virginia at § 63.2-526 sets forth the provisions for a Statewide Fraud Control Program and requires the State Board to adopt regulations to implement the provisions of the program.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The regulation relates to the administration of the Fraud Program by the state and local departments of social services. The revisions will more accurately define the local administrative allocation and reimbursement practices related to local fraud activities. Local fraud prevention and detection activities are paramount to ensuring public assistance programs serve only those actually in need of assistance and, therefore, by ensuring that limited funding is available only to those in need protects the health safety and welfare of Virginia's citizens.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

The regulation section pertaining to local allocations and reimbursement of fraud activities is being amended to reflect current practices. Beginning in state fiscal year 2014, DSS moved to a single random moment sampling (RMS) funding pool for all local administrative activities, rather than two funding pools, one for benefit programs and one for family services. As a result, reimbursement is made to local departments from the appropriation for Financial Assistance for Local Social Services Staff and Operations based on DSS' federally-approved cost allocation plan. RMS allows local departments to accurately document staff activities relating to reimbursable federal programs. RMS sampling is a recognized and accepted alternative to burdensome 100% time reporting. Language in the current regulation does not accurately reflect the change in local funding allocations and reimbursements.

The regulation is being amended to incorporate the specific methodology for the funding allocation. Each local department's allocation will be determined as follows: 40 percent on the local department's Temporary Assistance for Needy Families, Food Stamp, Energy Assistance and Child Care caseload; 60 percent on the number of completed investigations (20 percent), the number of established claims (20 percent) and the actual collections from established claims (20 percent.)

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

The regulation clarifies the current regulation to state the specific funding methodology used to allocate funds to local agencies. Additionally the regulation will correct the statement that reimbursements to local agencies are based on the formula. In 2014, the Department changed its funding methodology for local social services staff to a single pool. As a result, reimbursement is made to local agencies based on the Department's federally approved cost allocation plan from funds appropriated for local social services staff and operations as set forth in the Appropriations Act. The primary advantage of the action to the public and local departments is having a clear regulatory base for the methodology that is consistent with practice. There are no disadvantages.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no proposed requirements that are more restrictive than applicable federal requirements. Federal requirements do not prescribe how states reimburse local agencies for fraud related activities. The federal rules do require that state submit a Cost Allocation Plan which defines how the data is collected and calculated for allocation of expenses to the various federal programs administered by local agencies, the plan must be approved by the federal Division of Cost Allocation, U.S. Department of Health and Human Services.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

While all 120 local departments of social services are required to operate a fraud prevention and detection program, independently or in conjunction with another local department of social services, the proposed regulation does not impose any requirement that would disproportionately impact one locality or a group of localities.

Family impact

Please assess the impact of this 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.

Maintaining program integrity in public assistance programs is essential to ensuring that the citizens of the Commonwealth know their tax dollars are adequately protected from abuse. The regulation will not strengthen or erode the rights of parents in the education, nurturing or supervision of their children but will hold them accountable for providing true and correct information if they depend on public assistance to feed, clothe or house their children. The regulation itself does not encourage or discourage economic self-sufficiency, but it does establish rules for investigating potential fraud for individuals receiving public assistance. The regulation has no impact on the marital commitment. The regulation could potentially decrease disposable family income if the income received is from public assistance and is being obtained fraudulently.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

No changes were made to the text of the proposed regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

No comments were received during the public comment period.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
20	n/a	Localities are reimbursed for their fraud activities based on the methodology established by a work group. The level of reimbursement of direct and support operation costs is paid from available federal and other funds.	<p>An allocation is made to localities based on the methodology established by a work group. Each local department is reimbursed for fraud-related expense through funds appropriated for local staff and operations.</p> <p>The regulation is being amended to incorporate the specific methodology for the funding allocation.</p> <p>The intent is to correct language to reflect current practice. There will likely be no impact from the promulgation of the proposed regulation.</p>