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Proposed Regulation Department Background Document

Department name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40 -325
Regulation title	Fraud Reduction/Elimination Effort
Action title	Redefine Criteria for Reimbursement
Document preparation date	April 14, 2004

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The proposed regulation amends the formula for reimbursement to local departments of social services for Fraud Reduction/Elimination Effort (FREE) approved direct and support operation costs. In addition to the reimbursement formula modification, the Department will require local fraud units to meet performance expectations developed by the Department. The proposed regulation clarifies the information to be included in the local department's program operation plan.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the department, board,

or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 63.2-217 of the Code of Virginia provides that the State Board of Social Services shall adopt such regulations as necessary to carry out the purpose of Title 63.2 of the Code of Virginia. Section 63.2-526 mandates the Department of Social Services to establish a statewide fraud control program. The provisions of 22 VAC 40-325 are directly related to the statutory authority by describing the requirements of both the Department of Social Services and the local departments of social services for establishing and maintaining the statewide fraud control program.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The primary goal of the amended regulation is to redefine the criteria for reimbursement to local departments for direct program costs, such that local agencies would be reimbursed from their state share of collections up to their local share of program cost. Redefining reimbursement criteria to adequately fund the FREE Program protects the welfare of citizens by ensuring the continuation and maintenance of the Department’s statewide fraud reduction/elimination effort. The redefinition of the criteria for reimbursement for local program costs is needed to ensure the continuation of the statewide fraud program.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)

The proposed regulation modifies the formula for reimbursement to local departments of social services for Fraud Reduction/Elimination Effort (FREE) Program approved direct costs and support operation costs. The current regulation requires that in order to receive full reimbursement, a local department must collect overpayments, net refunds due to the federal government, which equal or exceed the local share of FREE Program costs. The proposed regulation reiterates that reimbursement for program costs shall be paid from available federal funds, any available general funds and balances in the Fraud Recovery Special Fund. The state share of collections may be applied toward reimbursement of their individual local share of costs.

The Department will require local fraud units to meet performance expectations developed by the Department.

The proposed regulation clarifies the information to be included in the local department’s program operation plan.

Revisions are made to include the responsibility of fraud detection, an integral component of fraud prevention and investigation. Additionally, the definitions section of the regulation is amended for clarity.

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 department or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

Maintaining the statewide FREE Program enhances program integrity, and promotes the recovery of program overpayments due to the occurrence of fraud; thus contributing to the welfare of citizens. The advantage to the public and the Commonwealth in implementing the amended regulation is that program integrity of the Department's benefits programs is not jeopardized. Maintaining the FREE Program ensures that public assistance benefits and services are received only by eligible individuals, and in the correct benefit amounts. There are no disadvantages to the public or Commonwealth in amending the regulation.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

There is no anticipated economic impact. If funds are not available, localities are under no obligation to operate the program.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the department to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

A critical element of maintaining the FREE Program is funding. The level of recovery of Temporary Assistance to Needy Families (TANF) and Food Stamp overpayments, a major component of the fraud program funding stream, is not sufficient to support the program. Consideration is being given to reducing dependency on TANF and Food Stamp overpayment recoveries by expanding the level of effort in Child Care Program fraud investigations, which would be funded by Child Care Program administrative funds. Inclusion of Child Care Program administrative funds would reduce dependency on TANF and Food Stamp benefit overpayment recoveries. However, this is not a viable alternative at this time.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the department response.

Commenter	Comment	Department response
Robert A. Cox, III	To ensure maximizing statewide collections efforts, recommend funding fraud program through state general funds, and establish a collections program funded through recovery of overpayments.	General funds are currently limited. Suggestions will be considered when revising the regulation.
Shawn M. Rozier	Regulations require collections to fund the FREE Program. Department provides minimal training to locals on collection activity. Current program does not encourage fraud prevention. But fraud must be permitted in order to establish claims. Recovery of claim amounts fund the FREE Program.	Concur that FREE Program is flawed and is unable to support itself under current funding methodology. The Division of Fraud Management is consulting with Finance Division to secure additional funding. Amended regulations will be proposed to revise the funding methodology.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The proposed regulatory action will maintain the Department’s level of integrity by the continuance of the statewide fraud investigation program; thus ensuring that assistance program benefits are available to eligible families.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

