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Regulatory
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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board 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 changing exemptions and work definitions, and creating a new transitional benefit.
Date this document prepared	June 14, 2006

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

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*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an "emergency situation" as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The Deficit Reduction Act of 2005 (DRA), signed into law February 23, 2006, requires states to meet certain work participation rates in their Temporary Assistance for Needy Families (TANF) programs or face substantial penalties. The DRA changes the calculation of work participation rates and is effective October 1, 2006. In order to implement the changes necessitated by the DRA, an emergency regulation is needed.

Legal basis

Other than the emergency authority described above, 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 Deficit Reduction Act of 2005 altered the way in which TANF work participation rates are calculated. These regulations are necessary for the state to regulate its state TANF program and comply with the provisions of the DRA.

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 Deficit Reduction Act of 2005 placed new requirements on states to meet work participation rates. As a result of the federal changes, more TANF recipients must engage in work activities. The proposed changes are aimed at increasing the work participation rate. More people will be required to participate due to change in exemptions. The work activities will be expanded to provide greater flexibility and to broaden the ability of social services staff to meet the needs of TANF recipients. A new transitional benefit will provide an incentive for job retention and will allow the state to continue counting participation from persons that are employed but have lost eligibility for TANF cash assistance.

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 penalties for failing to meet required work participation rates are substantial. The potential loss of funding would severely hamper the ability of the Department of Social Services to operate the TANF program. The TANF program plays an essential support role for very poor families with children by supplying cash assistance, employment services, and supportive services. The loss of funding would harm the program and the vulnerable families that receive services. The changes are needed in order to protect the welfare of poor families in the Commonwealth and to avoid fiscal sanctions.

Substance

Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22VAC40-35-10		The definition of work activity includes unsubsidized and subsidized employment, community work experience, and on-the-job training.	The definition is amended to include the definitions allowed in federal law and regulation: job search and job readiness, vocational education, job skills training, community service, and certain educational activities. Expanding the definition of work activities will allow greater flexibility in meeting the disparate needs of customers. Expanding activities increases the chances that a customer is placed in an activity that is countable for work participation rate purposes.
22VAC40-35-80		The regulation specifies some of the exemptions from VIEW.	<p>The exemptions for minors, those permanently disabled, and persons age 60 or older are included in the regulation. These exemptions are exercised in practice but previously were not included in the regulation.</p> <p>The exemption for caring for a young child has been added to the regulation. The age of the child has been changed from 18 months, as stated in State Code, to 12 months, as allowed under federal law.</p> <p>Non-parents must now participate in VIEW.</p> <p>Pregnant women must now participate in VIEW, but activities are limited to job readiness, training, and education.</p>
22VAC40-35-90		Currently there is no transitional job retention assistance.	VIEW participants who end TANF eligibility with employment are eligible for monthly job retention payments of up to one year if they maintain employment of an average of 30 hours per week.
22VAC40-35-100		Participants are placed in work activities with an established priority order.	The priority order is removed to provide greater flexibility for staff and participants.
22VAC40-35-100		Eight hours of education may be substituted for assigned hours of CWEP.	Education hours may be substituted for CWEP as long as the participant is in CWEP at least 20 hours per week so that federal work participation requirements are met.
22VAC40-35-100		Work activities include unsubsidized and subsidized employment, community work experience, and on-the-job training.	To provide greater flexibility for participants and staff, work activities have been expanded to include the activities allowed in federal law and regulation: job search and job readiness, vocational education, job skills training, community service, and certain educational activities.

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 describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

Consideration was given to changing the VIEW exemption for caring for a young child so that a person was exempt for caring for a child younger than 12 months of age. However, this was rejected and instead the exemption age was established as 12 months of age. A lower age of the child would substantially increase the cost of child care.

A person is exempt from VIEW if over the age of 60. Consideration was given to increasing this age commensurate with standard retirement age. This change was rejected as the current exemption actually applies to very few people.

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 changes in the regulation will have a positive effect upon families. The changes in the regulation will require more families to participate in the VIEW program. The program has been extremely successful in assisting families to engage in work and to increase earned income on the way to financial self-sufficiency. More parents will be moved toward self-sufficiency and will assume greater responsibility for themselves and their families. The changes in this regulation will also increase disposable family income.