



Fast Track Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-910
Regulation title	General Provisions for Maintaining and Disclosing Confidential Information of Public Assistance, Child Support Enforcement and Social Services Records
Action title	Amend regulation to clarify definition and replace references to a repealed regulation
Date this document prepared	December 14, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The current definition of "research" is being amended to ensure that disclosure of confidential information is done within the confines of federal confidentiality regulations. Two sections of the regulation, 22VAC40-910-80(D) and 22VAC40-910-90(D)(6), provide that release of public assistance and child support records to law enforcement and Commonwealth's and county/city attorneys is governed by 22VAC40-320. 22VAC40-320 has been repealed and these two sections are being amended by replacing references to the repealed regulation with applicable current citations.

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 action on 22VAC40-910, General Provisions for Maintaining and Disclosing Confidential Information of Public Assistance, Child Support Enforcement and Social Services Records, on December 14, 2011.

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 General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Section 63.2-217 of the *Code of Virginia* gives the State Board of Social Services the responsibility to make rules and regulations to carry out the purposes of social services programs. Sections §§ 63.2-102 through 63.2-105 pertain to confidentiality of public assistance and social services records and information.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail 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.

Public assistance, child support enforcement, and social services programs are essential to protecting the health, safety and welfare of citizens. This regulation assists these programs in protecting the health, safety and welfare of citizens by ensuring that public assistance, child support enforcement, and social services confidential client information will be protected and released only according to federal and state laws and regulations. This regulation provides separate sections for public assistance, child support enforcement, and social services programs. Each section includes the applicable statutory and regulatory citations and/or provisions related to confidentiality. The regulation helps ensure compliance with confidentiality requirements, thereby affording greater protection of privacy to all Virginians.

The three amendments to the regulation are necessary to clarify a key definition and update references to an obsolete regulation.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The agency does not expect the amendments to the regulation to be controversial. The change to the definition of “research” better frames the term as used in this regulation, was recommended by the Office of Attorney General, and is within the agency’s authority. Replacing references to a repealed regulation is necessary in order to keep the regulation current. The three changes are not anticipated to be problematic in any way.

Substance

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

In 22VAC40-910, the definition of “research” is broad and may allow for the disclosure of public assistance information in violation of federal confidentiality regulations. The Office of Attorney General recommended the definition be tightened to reference research to contribute to general knowledge “related to specific programs.”

22VAC40-910-80 relates to confidential client information pertaining to public assistance. Subsection D provides that release of client records to law enforcement and Commonwealth’s and county or city attorneys is governed by 22VAC40-320 (Disclosure of Information to Law Enforcement Officers in the Aid to Families with Dependent Children Program). 22VAC40-320 has been repealed. Reference to the repealed regulation will be replaced with the appropriate federal citation, 7 C.F.R. § 272.1(c)(1).

22VAC40-910-90 relates to confidential client information pertaining to child support enforcement. Subsection D(6) provides that release of client records to law enforcement and Commonwealth’s and county or city attorneys is governed by 22VAC40-320 (Disclosure of Information to Law Enforcement Officers in the Aid to Families with Dependent Children Program). 22VAC40-320 has been repealed. Reference to the repealed regulation will be replaced with the appropriate Virginia Administrative Code reference, 22VAC40-880-520(B).

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 primary advantage of the regulation overall to the public, the Department of Social Services and the Commonwealth is that it ensures that public assistance, child support enforcement, and social services client information will be protected and released only according to federal and state laws and regulations. The three amendments are advantageous because they facilitate the accuracy and effectiveness of the regulation and allow for continued enforcement of the regulation.

The agency is not aware of disadvantages to the public or Commonwealth.

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 requirements more restrictive than applicable federal requirements.

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.

The regulation is applicable to 120 local departments. There is no locality particularly affected by the regulatory action.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

No alternatives to the existing regulation are feasible. This regulation was promulgated in response to §§ 63.2-102 through 63.2-105, which specify that, except as provided by state and federal law and regulation, no records, information or statistical registries concerning applicants for and recipients of public assistance shall be made available except for purposes directly connected with the administration of the public assistance program. The regulation and amendments have no impact on small businesses.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	There is no projected cost to the state.
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	There are no projected costs to localities.
Description of the individuals, businesses or	Changes to the regulation clarify one definition and

<p>other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</p>	<p>update references to a repealed regulation. There will be no economic impact on local departments of social services or applicants or recipients of social services, public assistance and child support enforcement.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Changes to the regulation clarify one definition and update references to a repealed regulation. There will be no economic impact on local departments of social services or applicants or recipients of social services, public assistance and child support enforcement. No small businesses are affected.</p>
<p>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There are no projected costs of the changes to the regulation.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>This regulation assists certain programs in protecting the health, safety and welfare of citizens by ensuring that public assistance, child support enforcement, and social services confidential client information is protected and released only according to federal and state laws and regulations.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

No alternatives to the existing regulation are feasible. This regulation was promulgated in response to §§ 63.2-102 through 63.2-105, which specify that, except as provided by state and federal law and regulation, no records, information or statistical registries concerning applicants for and recipients of public assistance shall be made available except for purposes directly connected with the administration of the public assistance program. The regulation and the current action have no impact on small businesses.

Family impact

Please assess the 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.

This regulation and amendments have a positive impact on the institution of the family and family stability. The regulation ensures that confidential information is protected and released only according to federal and state laws and regulations. The regulation supports the privacy expectations of Virginians by strengthening the protection of confidential information in public assistance, child support enforcement, and social services records by compiling confidentiality provisions in one comprehensive regulation. The current regulatory action facilitates the accuracy and effectiveness of the regulation and allows for continued enforcement of the regulation.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

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

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10	n/a	Definition of "research" provides for investigation to develop or contribute to general knowledge.	Definition amended to clarify that research means investigation to develop or contribute to general knowledge <u>related to specific programs</u> . Change made at the advice of the Office of Attorney General, as it was believed the definition is too broad and may allow for the disclosure of public assistance information in violation of federal confidentiality regulations.
80(D)	n/a	Release of confidential public assistance records to law enforcement agencies and Commonwealth's and city/county attorneys is governed by 22VAC0-320.	22VAC40-320 has been repealed. The amendment replaces reference to the repealed regulation with the appropriate federal citation.
90(D)(6)	n/a	Release of confidential child support enforcement records to law enforcement agencies and Commonwealth's and city/county attorneys is governed by 22VAC0-320.	22VAC40-320 has been repealed. The amendment replaces reference to the repealed regulation with the appropriate reference in 22VAC40-880, Child Support Enforcement Program.

Periodic review/small business impact review result

Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

In addition, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

No comments were received as a result of publication of the Notice of Periodic Review.

The regulation addresses confidential information regarding public assistance, child support enforcement, and social services programs administered by the Department of Social Services and local departments of social services. There is continued need for the regulation.

Discussion of confidentiality and release of information can be relatively complex, simply given the nature of the topic. However, this regulation is clearly written and is understandable. The amendments, especially to the definition of "research," add clarity.

The regulation does not overlap, duplicate or conflict with federal or state law or regulation.

The last activity on this regulation was in 2009. A Notice of Periodic Review was published in the *Virginia Register* on August 15, 2011, with public comment ending September 5, 2011. Prior to that, a periodic review was completed in October 2007.

The regulation should be amended as noted in this TH-04. The amendments have no impact on small businesses.