



## Proposed Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22 VAC40-295
<b>Regulation title</b>	Temporary Assistance for Needy Families
<b>Action title</b>	Temporary Assistance for Needy Families Penalties Spending Violations
<b>Date this document prepared</b>	April 17, 2014

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

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

A new section is being added. Per § 63.2-621 of the Code of Virginia, TANF recipients shall not access TANF benefits through an electronic benefit transaction for the purchase of alcoholic beverages, tobacco products, lottery tickets, or sexually explicit visual materials or in any transaction in a Virginia Alcoholic Beverage Control store, an establishment in which pari-mutuel wagering or charitable gaming is conducted, an establishment in which tattooing or body-piercing is performed, or in any establishment that provides adult-oriented entertainment in which performers or other individuals connected with the business appear nude or partially nude. The amended regulation will provide for penalties for TANF recipients who violate § 63.2-621. The first offense will result in the loss of TANF financial assistance for one month. The second offense will result in the loss of TANF financial assistance for three months. Subsequent offenses will result in the loss of TANF financial assistance for six months.

### 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.*

TANF – Temporary Assistance for Needy Families. Temporary Assistance for Needy Families" or "TANF" means the program administered by the Virginia Department of Social Services, through which a relative can receive monthly cash assistance for the support of his eligible children.

### 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.*

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.

### 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, the environmental benefits, and the problems the proposal is intended to solve.*

The purpose of the proposed action is to amend the TANF regulation by adding penalties for persons violating spending restrictions. One of the main purposes of the TANF Program, as set forth in the authorizing federal statute, the Personal Responsibility and Work Opportunity Reconciliation Act (Public Law 104-193), is to "provide assistance to needy families so that children can be cared for in their own homes or in the homes of relatives." TANF benefits are intended to be used to insure that the needs of children are addressed in an effort to help them become productive citizens. TANF is not intended to provide assistance to enable a child's parent to purchase alcohol, gamble, get tattoos or other uses restricted by § 63.2-621 of the Code of Virginia. The intent of the penalties set forth in this proposed regulation is to deter parents from using TANF for inappropriate purposes, thereby insuring the benefits are used for the subsistence needs of the child to promote the child's health, safety and welfare.

### Substance

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)*

A new section will be added to the regulation. Recipients of TANF that violate the provisions of § 63.2-621 will be penalized with the progressive loss of benefits. The first offense will result in the loss of TANF financial assistance for one month. The second offense will result in the loss of TANF financial assistance for three months. Subsequent offenses will result in the loss of TANF financial assistance for six months.

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

The primary advantage to the general public and the Commonwealth is that this regulation will provide a deterrent to misusing tax-payer funded public benefits. The proper use of assistance will result in more efficient use of funds and will ensure that funds are used as intended for providing necessities to poor families with children. There are no known disadvantages to the regulation.

**Requirements more restrictive than federal**

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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.

Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96) requires states to “maintain policies and practices as necessary to prevent assistance provided under the State program funded under this part from being used in any electronic benefit transfer transaction in any liquor store; any casino, gambling casino, or gaming establishment; or any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.” The federal statute is silent on the policies and practices the state puts into place to prevent electronic benefit transactions in these locations. The federal statute also does not specify any types of penalties.

Rather than implement an expensive electronic solution by putting a new card into use or requiring the re-programming of automated teller machines and purchase of service devices around the state, we instead put the onus on recipients to properly use the TANF debit card. Part of this effort is imposing penalties that serve as a deterrent to misuse of the TANF debit card. Without penalties, the small percentage of recipients that are inclined to misuse the TANF debit card will continue to do so.

**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.

There are no localities in the Commonwealth that have a disproportionate impact from this regulation.

**Public participation**

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail to , email or fax to Mark L. Golden, 801 E. Main St, Richmond, VA 23219, by email to [mark.golden@dss.virginia.gov](mailto:mark.golden@dss.virginia.gov), by fax to (804) 726-7357. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

**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. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.*

<p><b>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal.</b> Think broadly, e.g., these entities may or may not be regulated by this board</p>	<p>This regulation will impact recipients of TANF.</p>
<p><b>Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected.</b> Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.</p>	<p>Approximately 30,000 families receive TANF each month. However, based on findings in other states, only a small fraction of recipients use TANF benefits in such a way as to violate the Code of Virginia §63.2-621. Indiana studied transaction data from October through December 2011 and determined that of 28,000 transactions per month, only 30 took place in liquor stores. New Hampshire reviewed a six-month period of transactions and determined that no transaction could be identified as having occurred in a liquor store, gambling establishment, or adult entertainment establishment. Florida’s analysis indicated less than .01% of benefits were accessed at liquor stores and casinos. If we assume that the results in Virginia will be the average of these states, then we can expect about 5 cases per month on a statewide basis.</p>
<p><b>Benefits expected as a result of this regulatory proposal.</b></p>	<p>This regulation will provide a deterrent to misusing tax-payer funded public benefits. The proper use of assistance will ensure that funds are used as intended for providing necessities to poor families with children.</p>
<p><b>Projected cost to the state to implement and enforce this regulatory proposal.</b></p>	<p>Five cases per month will lose one month of benefits. At an average monthly benefit of \$258 per case, this results in a savings of \$15,480 per year (5 * \$258 * 12) in the cost of TANF assistance.</p>

	<p>It is estimated that the administrative procedures to update the automated system and issue a client notice will take 30 minutes per case. For 5 cases per month, this amounts to 2.5 hours per month on a statewide basis. The employee wages for this would be \$1,419, of which the state share would be \$1,199.</p> <p>As the hours are expected to be minimal, with the impact spread among all of the local departments of social services, no additional personnel will be added and the administrative cost will be absorbed.</p>
<p><b>Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.</b></p>	<p>It is estimated that the administrative procedures to update the automated system and issue a client notice will take 30 minutes per case. For 5 cases per month, this amounts to 2.5 hours per month on a statewide basis. The employee wages for this would be \$1,419, of which the local share would be \$220.</p> <p>As the hours are expected to be minimal, with the impact spread among all of the local departments of social services, no additional personnel will be added and the administrative cost will be absorbed.</p>
<p><b>All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities</u>.</b> Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.</p>	<p>There is no cost to individuals, businesses, or other entities.</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.*

The TANF program could continue to be operated without penalty for violating § 63.2-621 of the Code of Virginia. However, this was rejected as it does not meet the intent of § 63.2-621 of the Code of Virginia nor will it do anything to prevent such violations from happening.

One alternative approach is to reduce the amount of the grant by removing only the adult caretaker. This would reduce the grant amount by approximately \$60 per month. In many cases, such as when a grandparent is receiving assistance on behalf of her grandchildren, the caretaker is not actually receiving assistance. Therefore, no penalty would be imposed.

Another alternative approach would be to alter the proposed sanction times. The length of the proposed sanctions were selected because they are the same penalties for participants that fail or refuse to comply

with the requirements of the employment and training program, the Virginia Initiative for Employment not Welfare.

**Regulatory flexibility analysis**

*Pursuant to §2.2-4007.1B of the Code of Virginia, 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.*

The proposed regulation was drafted to be the least burdensome on the citizens of the Commonwealth. The burden for properly using TANF benefits rests with the recipient. The agency chose to not add requirements for retailers and card vendors with this regulatory action.

**Public comment**

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

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Pamela Felts	The commenter agrees that there should be restrictions on the use of TANF benefits.	Agency agrees.

**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.*

The proposed regulation will have a positive impact on families receiving public assistance. Punishing the violators of the requirements of the Code of Virginia § 63.2-621 will create a disincentive to the improper use of TANF assistance. This ensures that TANF funds will be spent appropriately and that families and children are receiving the benefit of the assistance provided, rather than being spent on items that are non-essential to the well-being of a family.

**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. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.*

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

For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
n/a	145	The current regulation does not include this requirement.	Penalties will be enforced for TANF recipients who violate § 63.2-621. The first offense will result in the loss of TANF financial assistance for one month. The second offense will result in the loss of TANF financial assistance for three months. Subsequent offenses will result in the loss of TANF financial assistance for six months. The amended regulation will create a disincentive to the improper use of TANF assistance.