



COMMONWEALTH of VIRGINIA
Office of the Attorney General

Jason S. Miyares
Attorney General

202 North 9th Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120

TO: KARIN CLARK
Virginia Department of Social Services

CC: SCOTT F. WEBER
Sr. Assistant Attorney General/Section Chief

FROM: JOSH S. OURS
Sr. Assistant Attorney General

Date: September 6, 2023

Re: Revised submission to Amend 22VAC40-880 Child Support Enforcement Regulations

I have reviewed the attached amendments to 22VAC40-880. Pursuant to Office of Regulatory Management's review procedures issued in accordance with Executive Order 19 (2022), the Office of the Attorney General (OAG) is charged with reviewing the proposed amendments and producing "a memorandum assessing the agency's legal authority to promulgate the regulation, identifying any specific mandate¹ that requires the regulation, and determining that the content of the proposed regulation does not conflict with applicable law." The OAG "may also provide any advice, recommendations, or other comments for consideration by the Governor with respect to" the regulation.

Authority: Virginia Code § 63.2-217 states that the State Board of Social Services shall adopt regulations "as may be necessary or desirable to carry out the purpose of this title." Therefore, the State Board has the authority to amend 22VAC40-880 as proposed, subject to compliance with Article 2 of the Administrative Process Act, Executive Order 19 (2022), and the procedures of the Office of Regulatory Management.

¹ Per the Office of Regulatory Management's regulation review procedures, "'mandate' refers to a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Mandate: Virginia Code § 2.2-4101 defines “regulation” as “any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an agency. . . .” Though no new regulations are proposed in this action, the regulations being amended arguably impact the rights or conduct of persons. Therefore, to the extent that DCSE desires to utilize and memorialize the policies and procedures set forth in the proposal, promulgation of regulations is the correct method to do so. Further, the proposed amendment to 22VAC40-880-240 is mandated by 45 CFR § 302.56(c)(1)(iii), which sets forth specific requirements for the imputation of income under state child support guidelines. The proposed amendment incorporates the methods and considerations which are required by the federal statute and which have been recommended for addition to the Code of Virginia by the Virginia Child Support Guidelines Review Panel.

Conflicts with applicable law: None.

Comments: None

Please contact me if you have any questions.