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Fast-Track Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC40-880
VAC Chapter title(s)	Child Support Enforcement Program
Action title	Family Engagement Services
Date this document prepared	December 5, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulatory action will create two new sections, **22VAC40-880-800** "Family Engagement Services" and **22VAC40-880-810** "Family Engagement Services, Case Management" to allow the division of Child Support Enforcement (division) to establish and maintain services to assist persons with a duty to pay child support with needed resources to meet the requirements of their support obligation.

"Family Engagement Services" defines the purpose of such services. "Family Engagement Services, Case Management" establishes the parameters for the services, including timeframes and the division's obligations to the participant and nonparticipant.

This action also amends Section 10, "Definitions," to define supporting terms. It amends section 390, entitled "Additional remedies," to allow the department to clarify use of state and federal remedies to ensure compliance with a child support order.

Finally, it amends Section 430, Validity of the appeal,” to add “of process” after the word “service” in two instances. As the Department of Planning and Budget explains in 2014 guidance, *Virginia State Government Program Structure*,¹ the words “program” and “structure” are terms of art. Using “service” as a shorthand for “service of process” creates an unnecessary risk for confusion, and it is clearer to use “service of process” when necessary.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

Statement of Final Agency Action

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 action on the Child Support Enforcement Program regulation on April 19, 2023.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “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.”

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

The impetus for change is a Board decision to ensure there is an authorizing regulation describing use of Family Engagement Services. 45 C.F.R. § 303.6 requires IV-D (child support) agencies to use appropriate and available enforcement methods to obtain compliance with support obligations. It also requires that IV-D agencies establish guidelines for filing civil contempt citations and that these guidelines must include screening the case for the noncustodial parent’s ability to pay or otherwise comply with the order. As a component of reviewing for ability to pay, there are case participants who may need more assistance than others in maintaining support order compliance.

The Board does not believe that the proposed regulation will be controversial. Providing referrals to assist noncustodial parents to address barriers that hinder their ability to support themselves and their families is consistent with the department’s mission to “design and deliver high-quality human services that help Virginians achieve safety, independence and overall well-being” and vision of a “Commonwealth in which all Virginians have the resources and services they need to shape strong futures for themselves, their families and their communities.”

¹ <https://dpb.virginia.gov/forms/20140717-1/VirginiaStateGovernment-ProgramStructure.pdf>

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

Section 63.2-217 of the Code of Virginia (Code) states that the State Board of Social Services shall adopt regulations, not in conflict with title 63.2 (Social Services), as may be necessary or desirable to carry out the purpose of that title.

Section 63.2-1901 of the Code provides an outline of the duties of the department which include “to further the effective and timely enforcement of such support while ensuring that all functions in the department are appropriate or necessary to comply with applicable federal law.”

45 C.F.R. § 303.6 of the Code of Federal Regulations sets forth the requirements for enforcement of support obligations which requires the IV-D agency to “maintain and use an effective system for: monitoring compliance with the support obligation...(and) enforcing the support obligation by: taking any appropriate enforcement action...”

Chapter 448 of the 2008 Acts of Assembly provided for a pilot of intensive case monitoring services.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The ability to provide consistent child support payments is tied to steady employment and parental engagement. The regulation is essential to protect the health, safety, or welfare, because the proposed regulation clarifies the use of Family Engagement Services. When parents are unable to pay their child support obligations, their children and families do not receive needed support, and, often, co-parenting and parent-child relationships suffer. In addition, child support arrearages can accumulate over time, and large arrearage debts have negative effects on the well-being and health of the parents who owe them.

This change would allow the division to provide more intensive case management services for participants facing obstacles that hinder their ability to maintain steady employment that allows them to provide for themselves and their children. The proposed change also sets clear public guidelines regarding accountability for active participation and compliance and clarifies how the division will provide consistent and equitable services.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

This regulatory action amends sections 10, “Definitions;” 390, “Additional remedies;” and 430, “Validity of the appeal,” and creates two new sections, 22VAC40-880-800 “Family Engagement Services” and 22VAC40-880-810 “Family Engagement Services, Case Management” to clarify the department’s ongoing use of state and federal enforcement remedies to obtain the noncustodial parent’s compliance with the support obligation.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

There are several advantages to this regulation:

- This regulation will allow the division to provide intensive case management services to participants to help them overcome the challenges they face with complying with their support obligations
- Referring participants to community partners and other agency resources allows participants to address the circumstances that can become long- term deterrents or obstacles to supporting themselves and their families.
- Assisting participants with addressing these underlying obstacles contributes to long-term stability for themselves and their families.
- Leveraging community and governmental agency partnerships assists with increasing the frequency and amount of child support payments.
- Providing consistent payments fosters greater cooperation between parents, and greater parental cooperation leads to greater family self-sufficiency and provides a more nurturing environment for children.
- Self-sufficient families contribute to overall community stability and progress.

The proposed regulation includes provisions to address both the participant who does not follow through with provisions and is noncompliant with the support obligation, as well as participants who, after 90 days of enrollment, are still noncompliant with the support obligation. A participant may be compliant with the service plan but is still not paying or meeting their support obligation. Another participant may be noncompliant with both the service plan and paying support obligation.

There are no disadvantages to the public or the Commonwealth.

The division has provided similar services for years, and Chapter 448 of the 2008 Acts of Assembly provides for intensive case monitoring services.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

This regulatory action is consistent with current federal requirements and guidance.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

A positive affect will be for the Supreme Court of Virginia as the department would have further evidence of a participant's ability to pay in cases filed for civil contempt. Additionally, since services have components that provide referrals for parental access and visitation, there is the potential for fewer contested custody cases and increased custody and visitation consent agreements submitted for orders.

Localities Particularly Affected

No locality will be particularly affected.

Other Entities Particularly Affected

No other entity will be particularly affected.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>See the ORM Economic Impact Form, Table 1a.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	See the ORM Economic Impact Form, Table 1a.
Benefits the regulatory change is designed to produce.	

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	See the ORM Economic Impact Form, Tables 1a, 3, and 4.
Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	
Benefits the regulatory change is designed to produce.	

Pursuant to § 63.2-217, this regulatory action will have no fiscal impact on local boards and, therefore, providing copies of the fiscal analysis to local boards is not required.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There is no alternative to accomplish this change without regulatory action.
This regulatory action will have no impact on small businesses.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

This regulatory action will have no impact on small businesses.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, 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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The department is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Thomasine Stewart, 801 E Main St, 12th floor, Richmond VA, 23218, phone 804-802-4783, fax 804-726-7478 or thomasine.r.stewart@dss.virginia. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
10			Adds definitions to support new sections (800 and 810) and strikes “service” as a shorthand for “service of process.”
390		The department may use available state and federal enforcement remedies to enforce child support obligations and collect accumulated arrearages.	Clarifies that the department not only uses state and federal enforcement remedies but shall use available enforcement remedies until the noncustodial parent is compliant with the support order. The rationale of the change is to improve clarity that the agency is required, under federal law, to continue use of such remedies. The likely impact is minimal, as this is a technical amendment.
430			Revises text to use “service of process,” rather than “service,” to avoid ambiguity.
	800	N/A	Establishes that the department is authorized to establish Family Engagement Services. The division will provide participants with referrals to services to assist parents facing barriers that interfere with their ability to meet their support obligations. Establishes that Family Engagement Services are administered in conjunction with state and federal enforcement remedies. The rationale of the new section is to ensure legal authority exists and to clarify the scope of such services for parents. The

			likely impact is to increase transparency on the scope of services.
	810	N/A	Establishes the case management requirements for the division's Family Engagement Services. These requirements include specific timeframes for establishing a services plan that establishes the participant service goals requirements. Establishes the division's obligations for assisting the participant and notification requirements to the nonparticipant. Establishes the division's participant compliance monitoring. Establishes that the division will file for civil contempt proceedings for participants who are not compliant with the services plan. Establishes that the division will file for civil contempt proceedings after 90 days after the services plan for participants who are compliant with the services plan but are not compliant with the support obligation. In this instance, the participant may continue in Family Engagement Services and continue receiving services to improve his or her ability to pay. The rationale of the new section is to ensure legal authority exists and to clarify the case management requirements for such services. The likely impact is to establish bright-line, transparent rules around when referral for civil contempt is appropriate.