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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC40-325
VAC Chapter title(s)	Fraud Reduction/Elimination Effort
Action title	Rename Program and Modify Local Reimbursement Formula
Date this document prepared	10/18/2023

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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

This regulatory action will rename the Fraud Reduction/Elimination Effort to the Statewide Fraud Control Program. In addition, it will change the methodology used to reimburse local departments of social services. Reimbursement to local departments of social services will reflect greater proportions for activities to investigate, establish overpayments of benefits and recovery of overpaid benefits. A locality's caseload size will have a lesser impact on the reimbursement rate. The agency will also review the regulation to identify any discretionary requirements that can be repealed or reduced, and may also propose changes to be responsive to public comment.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

Fraud Reduction/Elimination Effort – FREE

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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

The mandate for this regulatory change is a board decision. The formula for reimbursement to local departments of social services for fraud control activities provides more weight to the size of a locality’s caseloads for programs and less weight to actual fraud control activities taken or completed. This results in uneven reimbursement rates when compared to performance of desired outcomes, such as investigations initiated, claims established, or other similar actions. While there is no federal mandate to alter the reimbursement structure, the Food and Nutrition Service of the U.S. Department of Agriculture supports the proposed action to encourage active involvement in fraud control activities by local departments of social services.

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 grants authority to the State Board of Social Services to promulgate rules and regulations to operate assistance programs in Virginia. Section 63.2-526 of the Code of Virginia requires the State Board of Social Services to adopt regulations to implement a Statewide Fraud Control Program.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The regulation provides a framework for fraud control activities. Fraud control activities are essential to the welfare of citizens by ensuring that assistance programs are implemented with integrity and that there is equal access to benefits. Casual observation of the amounts for reimbursement for local departments of social services for fraud control activities shows that the larger localities, based on caseload sizes for programs, such as the Supplemental Nutrition Assistance Program or the Temporary Assistance for Needy Families Program, routinely receive sizable reimbursement amounts even though these departments may have only minimal fraud control activities. In contrast, local departments of social services with smaller program caseloads often outperform larger departments for completing fraud control activities. This regulatory action alters the formula for reimbursement to reduce the weight allowed for caseload size. This regulatory action also renames the program to align fraud control activities with a

similarly named section of the Code of Virginia. No potential issues that may need to be addressed have been identified at this stage.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

Substantive changes to existing sections include:

- Renames the fraud control efforts to the Statewide Fraud Control Program and eliminates all references to the Fraud Reduction/Elimination Effort. This action also eliminates the acronym FREE where it refers to fraud control efforts.
- Revises the formula used to calculate annual reimbursement to local departments of social services. Reimbursement will be based equal parts for caseload size, the number of established claims for overpayments, the number of completed investigations, and money collected from established claims. The formula previously allowed 40% calculation for caseload size and 20% each for the other three elements.

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.

No alternatives were considered, as the Code of Virginia requires the State Board of Social Services to adopt regulations for a statewide fraud control program. The regulation has no impact on small businesses.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

In addition, pursuant to the ORM procedures and § 2.2-4007.1 of the *Code of Virginia*, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

INSERT:

The State Board of Social Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

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 or email to Ross McDonald, Director of Compliance, 1604 Santa Rosa Road, Richmond, VA 23228, 804-726-7678, and ross.l.mcdonald@dss.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.