




COMMONWEALTH of VIRGINIA

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TO: MARGARET SCHULTZE, Commissioner
Virginia Department of Social Services

FROM: ERIC J. REYNOLDS 
Assistant Attorney General

DATE: December 14, 2015

SUBJECT: Periodic Regulation Review - 22 VAC40-293 (TANF Locality Groupings)

I have reviewed the above-referenced regulation, which is undergoing a periodic review, to determine if the State Board of Social Services ("State Board") has the statutory authority to promulgate the specified regulations and whether the specified regulations comport with applicable state law.

This regulation provides the basis upon which localities may change their placement in locality groupings for the purpose of establishing rates of assistance under the Temporary Assistance for Needy Families (TANF) program.

It is my opinion that the State Board of DSS has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the APA and has not exceeded that authority.

It is my view that this regulation is not exempt from but is subject to the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(a). If you have any questions or need additional information about these regulations, please contact me at (804) 786-3450.

cc: Kim F. Piner, Esquire
Attachment

Virginia Administrative Code
Title 22. Social Services
Agency 40. Department of Social Services
Chapter 293. Locality Groupings

22VAC40-293-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Locality groupings" means the placement of a locality into either Group I, Group II, or Group III, which determines the Temporary Assistance for Needy Families (TANF) payment level for families residing in that locality.

"Standard of assistance" means the TANF payment standard that is graduated by family size.

"State board" means the State Board of Social Services.

Statutory Authority

§ 63.2-217 of the Code of Virginia and Chapter 1042 of the 2003 Acts of Assembly (Item 353 F 1).

Historical Notes

Derived from Virginia Register Volume 20, Issue 21, eff. July 28, 2004.

22VAC40-293-20. Changing locality groupings.

A. A locality may change standard of assistance locality groupings by approval of the state board. The local board of social services shall request the change in writing to the State Board of Social Services and shall provide:

1. The most recently available fair market rent data from the U.S. Department of Housing and Urban Development. Other data sources may be used upon approval of the state board. Such data shall include a comparison of shelter costs in the petitioning locality and adjacent localities;
2. Data showing the proportion of TANF recipients to the general population of the locality, in the case of a request to change to a lower locality grouping. Such data shall include a comparison of the proportion of TANF recipients in the petitioning locality and adjacent localities; and
3. In order to assure that the locality has sufficient funding to cover any increased costs that may result from a change in locality grouping in the General Relief program and to assure that the local governing body is aware of the proposed change in locality groupings, documentation that the request to change locality groupings has been reviewed by the local governing body.

B. The Department of Social Services shall prepare a fiscal impact statement prior to the next meeting of the state board. The fiscal impact statement shall include the cost of benefits, the cost of altering information systems, and associated administrative costs. If the fiscal impact statement demonstrates increased costs, the Commissioner of the Department of Social

Services must certify that funds are available for increased costs.

C. If the state board approves a request to be reclassified into a locality grouping with lower standards of assistance, such reclassification shall be phased in by providing that eligibility and the amount of benefits in cases open at the time of such reclassification shall continue to be determined using the standards in effect in the former locality grouping at the time of the reclassification.

D. The state board shall approve the request if the following conditions are met:

1. If the request is to raise the locality grouping, the data must show that the rent costs in the petitioning locality are 20% higher than at least one other bordering locality and both localities are in the same locality grouping, or the fair market rent costs are less than or equal for at least one bordering locality (compared to the petitioning locality) and that locality is in a higher locality grouping. If the request is to lower the locality grouping, the data must show that rent costs in the petitioning locality are at least 20% lower than at least one other bordering locality and both localities are in the same locality grouping, or the fair market rent costs are greater than or equal for at least one neighboring locality (compared to the petitioning locality) and that locality is in a lower locality grouping;
2. The data demonstrates that there is a disproportionate number of TANF recipients in the locality when compared to adjacent localities, in the case of a locality requesting a change to a lower locality grouping. The number of TANF recipients is disproportionate if the percentage of TANF recipients in the general population is at least 0.8% higher in the petitioning locality than in the adjacent localities; and
3. Funds are available for increased costs.

Statutory Authority

§ 63.2-217 of the Code of Virginia and Chapter 1042 of the 2003 Acts of Assembly (Item 353 F 1).

Historical Notes

Derived from Virginia Register Volume 20, Issue 21, eff. July 28, 2004.