



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: KARIN CLARK
Virginia Department of Social Services

FROM: Jennifer C. Williamson
Senior Assistant Attorney General

DATE: December 8, 2015

SUBJECT: Periodic Review of 22 VAC 40-685
Virginia Energy Assistance Program – Home Energy Assistance Program

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.

Pursuant to Va. Code §§ 63.2-217, the State Board is required to promulgate regulations as may be necessary or desirable to carry out the purposes of § 63.2-500 *et seq.* and § 63.2-805. Consequently, it is my opinion that the State Board has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Orders 17 (2014) and 58 (1999) and has not exceeded that authority.

If you have any questions, please feel free to call me at 225-3197.

Virginia.gov Agencies | Governor



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Agency

Department of Social Services

Board

State Board of Social Services

Chapter

Virginia Energy Assistance Program - Home Energy Assistance Program

[22 VAC 40 - 685]

Periodic Review of this Chapter

Includes a Small Business Impact Review

Date Filed: 10/26/2015

Review Announcement

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Social Services is conducting a periodic review and small business impact review of VAC citation: 22 VAC 40-685, Virginia Energy Assistance Program.

The review of this regulation will be guided by the principles in Executive Order 17 (2014).
<http://dpb.virginia.gov/regs/EO17.pdf>

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form.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 or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins November 16, 2015, and ends on December 7, 2015. Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent Denise Surber, Program Consultant, 801 E. Main Street, Richmond, VA 23219 Telephone: 804-726-7386, FAX: 804-726-7358, email address: denise.t.surber@dss.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Public Comment Period

Begin Date: 11/16/2015 End Date: 12/7/2015

Review Result

Pending

Attorney General Certification

Pending

[Submit Review](#)

Virginia Administrative Code

Title 22. Social Services

Agency 40. Department of Social Services

Chapter 685. Virginia Energy Assistance Program - Home Energy Assistance Program

22VAC40-685-10. Definitions.

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

"Department" means the Department of Social Services.

"Energy assistance program" includes fuel, crisis, cooling, and weatherization assistance.

"Fund" means the Home Energy Assistance Fund, which is based on contributions and donations, and moneys appropriated by the General Assembly for the purpose of funding the Home Energy Assistance Program.

"Home Energy Assistance Program" means the voluntary assistance program to supplement the Virginia Energy Assistance Program.

"Household" means an individual or group of individuals who occupy a housing unit and share residential energy in common.

"LIHEAP" means the Low-Income Home Energy Assistance Program, a federal block grant that is the basis for the Virginia Energy Assistance Program.

"Other entities" means community, nonprofit, private, or charitable organizations that administer energy assistance programs, and local departments of social services that administer energy assistance programs other than those offered through the Virginia Energy Assistance Program funded by the Low-Income Home Energy Assistance Program.

"Program" means the Home Energy Assistance Program.

"Virginia Energy Assistance Program" means the assistance program developed in Virginia to address the residential energy needs of low-income households. The program is funded by and in accordance with the federal LIHEAP requirements.

Statutory Authority

§§ 63.2-217 and 63.2-805 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 1, 2003.

Virginia Administrative Code

Title 22. Social Services

Agency 40. Department of Social Services

Chapter 685. Virginia Energy Assistance Program - Home Energy Assistance Program

22VAC40-685-20. Home Energy Assistance Fund.

A. The Home Energy Assistance Fund is established on the books of the Comptroller in the Virginia State treasury as a nonreverting fund. Interest earned on moneys in the fund shall remain in the fund and be credited to it.

B. The purpose of the fund shall be to:

1. Supplement assistance provided through the Virginia Energy Assistance Program by assisting eligible low-income applicants with their residential energy needs;
2. Provide matching funds when required by federal regulations for LIHEAP (Virginia Energy Assistance Program) or Weatherization Assistance Program; and
3. Increase the amount of dollars the state may claim for a leveraging award through LIHEAP.

C. The fund shall consist of donations and contributions, moneys appropriated by the General Assembly, and interest earnings.

1. There shall not be restrictions placed on the amount of donations or contributions made to the fund.
2. Corporations, public agencies, individuals, and other entities may contribute to the fund.

D. Moneys received from public agencies, private utility service providers, charitable and community groups, and individuals seeking to assist low-income Virginians in meeting their residential energy needs shall be deposited into the fund and used in accordance with this chapter.

1. Special programs or fund raising projects may contribute monies to the fund.
2. State income tax refund checkoff moneys may be contributed to the fund.
3. General funds may be appropriated by the General Assembly into the fund.

E. The department shall disburse funds in one of the following two ways

1. Through the existing Virginia Energy Assistance Program.
2. Other means necessary to provide energy assistance to low-income individuals, at the discretion of the commissioner of the department.

F. Moneys in the fund not expended by June 30 of each year shall remain in the fund.

Statutory Authority

§§ 63.2-217 and 63.2-805 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 1, 2003.

Virginia Administrative Code

Title 22. Social Services

Agency 40. Department of Social Services

Chapter 685. Virginia Energy Assistance Program - Home Energy Assistance Program

22VAC40-685-30. Home Energy Assistance Program.

A. The department shall establish the Home Energy Assistance Program for the following purposes:

1. Administer available funds from the Home Energy Assistance Fund;
2. Coordinate energy assistance efforts among agencies of the Commonwealth and nonstate organizations electing to participate in the Home Energy Assistance Program;
3. Conduct research regarding available private and governmental resources for low-income Virginians in need of energy assistance; and
4. Collect data and report on the amounts of energy assistance provided through the department.

B. The Home Energy Assistance Program shall:

1. Disburse funds from the Home Energy Assistance Fund through the existing Virginia Energy Assistance Program.
2. Disburse funds from the Home Energy Assistance Fund by means other than the Virginia Energy Assistance Program at the discretion of the commissioner of the department.
3. Lead and facilitate meetings with other agencies of the Commonwealth and nonstate organizations participating in the Home Energy Assistance Program.
4. Conduct the necessary research to report to the Governor and General Assembly as required by § 63.2-805 of the Code of Virginia on the effectiveness of low-income energy assistance programs in meeting the needs of low-income Virginians.

C. Upon mutually agreed terms, the department may administer the low-income energy assistance programs of public agencies, private utility service providers, and charitable and community groups.

Statutory Authority

§§ 63.2-217 and 63.2-805 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 1, 2003; amended, Virginia Register Volume 24, Issue 9, eff. February 6, 2008.