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## Emergency/NOIRA Regulation Agency Background Document

<b>Agency name</b>	Department of Behavioral Health and Developmental Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	<u>12VAC35-240</u>
<b>Regulation title(s)</b>	Victims of Sterilization Fund Program
<b>Action title</b>	Create Administrative Criteria and Process for Victims of Sterilization Fund
<b>Date this document prepared</b>	07/31/2015; updated 11/21/15

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to eighteen months), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation. This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The 2015 Virginia General Assembly enacted the Commonwealth's Compensation for Victims of the 1924 Eugenical Sterilization Program on March 26, 2015, in Chapter 665 of the *Acts of Assembly* (the Budget Bill). Chapter 665 gives DBHDS the authority to pay claims and it establishes requirements for the compensation program, including funding limits on claims and a requirement that disbursements be based on the date on which sufficient documentation is provided. The language further requires that DBHDS must establish emergency regulations to implement these provisions before any applications for claims can be accepted and processed.

## Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.*

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“DBHDS” means the Virginia Department of Behavioral Health and Developmental Services.

“Act” means Chapter 394 of the 1924 *Acts of Assembly* passed by the Virginia General Assembly on March 20, 1924, known as the Virginia Eugenic Sterilization Act, which provided for the sexual sterilization of individuals admitted to state institutions in certain cases.

## Emergency Authority

*The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006. Please explain why this is an emergency situation as described above, and provide specific citations to the Code of Virginia or the Appropriation Act, if applicable.*

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Chapter 665 (Item 307.T.1-7) of the 2015 *Acts of Assembly*, enacted March 26, 2015, with an emergency clause.

## Legal basis

*Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) the promulgating entity, i.e., agency, board, or person.*

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Code of Virginia § 37.2-203 Powers and Duties (State Board of BHDS)

## Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

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This regulation provides administrative guidelines for appropriate documentation to verify the claims of and to compensate individuals who were victims of forced sterilization pursuant to the Virginia Eugenic Sterilization Act and who were living as of February 1, 2015 (up to \$25,000 per individual). It also provides an administrative process for handling all claims.

## Need

*Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

Chapter 394 of the 1924 Acts of Assembly passed by the Virginia General Assembly on March 20, 1924, known as the Virginia Eugenic Sterilization Act, provided for the sexual sterilization of individuals admitted to state institutions in certain cases. "Sterilization" means a medical procedure or form of birth control that leaves a male or female unable to reproduce or conceive children and was done pursuant to the Act. Any person claiming eligibility for compensation who applies pursuant to this regulation and whose application for a claim has been deemed complete, may receive \$25,000 from a fund totaling \$400,000 for this purpose.

### Substance

*Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the healthy, safety, or welfare of Virginians.*

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, and likely impact of proposed requirements

If a new regulation is being promulgated, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
10	Definitions		Creates definitions for use in these regulations for: <ul style="list-style-type: none"> <li>Act (the Virginia Eugenic Sterilization Act of 1924)</li> <li>Application (Application Form for Filing a Claim for Compensation for Victims of the 1924 Eugenics Sterilization Act)</li> <li>Claimant (any person or his lawfully authorized representative claiming eligibility for this fund program who applies for compensation)</li> <li>Commissioner (of the Virginia Department of Behavioral Health and Developmental Services)</li> <li>Department (Department of</li> </ul>

			<p>Behavioral Health and Developmental Services)</p> <ul style="list-style-type: none"> <li>• Lawfully authorized representative ((i) a person who is permitted by law or regulation to act on behalf of an individual; or (ii) a personal representative of an estate as defined in Virginia Code § 64.2-100 of an individual who died on or after February 1, 2015.)</li> <li>• Review panel (department staff members appointed by the commissioner to make final determinations on applications for claims)</li> <li>• Sterilization (a medical procedure or form of birth control that leaves a male or female unable to reproduce or conceive children and was done pursuant to the Act)</li> </ul>
20	Eligibility criteria		<ul style="list-style-type: none"> <li>• Sets out three criteria to determine a claimant's eligibility to receive compensation.</li> </ul>
30	Claims for compensation		<ul style="list-style-type: none"> <li>• Makes clear who may apply as a claimant; how to submit an application; and, supporting documents required to prove identity and to prove that forced sterilization occurred.</li> <li>• Department processes are made clear regarding notice in response to any submitted application.</li> </ul>
40	Screening		<ul style="list-style-type: none"> <li>• States how the department shall initially screen the application and accompanying documentation for completeness.</li> <li>• States that notice must be sent of completeness or incompleteness within seven calendar days of receipt and that 60 calendar days are allowed for the claimant to submit additional documentation.</li> <li>• Makes clear that only those applications deemed</li> </ul>

			complete will be forwarded to the review panel.
50	Review panel		<ul style="list-style-type: none"> <li>• Makes clear how the review panel is appointed, in what order completed applications will be considered for compensation, and how notification by the review panel will be made to the claimant.</li> </ul>
60	Requests for reconsideration		<ul style="list-style-type: none"> <li>• Establishes a process for anyone who filed an application who disagrees with the determination of the department to submit a written request for reconsideration to the commissioner, or his designee, within 30 calendar days of the date of the written notice of denial of a claim pursuant to this chapter.</li> <li>• Makes clear the timeframe within which the commissioner must review and respond to the request.</li> </ul>
70	Compensation		<ul style="list-style-type: none"> <li>• States the amount of compensation per claim, contingent on the availability of funding.</li> <li>• Establishes a process for the maintenance of verified claims should funds be unavailable, and when notice will be given of an initial exhaustion of or later availability of funds.</li> <li>• Makes clear the department will continue to receive applications regardless of availability of funding.</li> </ul>

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

There are no other known alternatives to administer compensation to victims of the Act.

## Public participation

*Please indicate whether the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments. Please also indicate whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.*

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The emergency process does not allow for public comment. However, the language was proposed during the 2015 Session of the Virginia General Assembly in House Bill 1504 and in the Budget Bill; therefore, the public had opportunity to comment during legislative process.

The agency will seek comments on the *next* regulatory action following the emergency process.

There is no expected impact on small businesses.

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

## Family impact

*Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The only impact on the family from this regulatory action would be a small increase in disposable family income for those claimants deemed eligible for compensation.