



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Department of Social Services
VAC Chapter Number:	22VAC40-295-10
Regulation Title:	Temporary Assistance for Needy Families
Action Title:	Establish Temporary Assistance for Needy Families.
Date:	June 18, 2003

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulation provides the rules for qualifying for TANF assistance. The regulation establishes rules pertaining to the assistance unit, income eligibility criteria, processing time frames, advance notice requirements, procedures for intentional program violations, the collection of overpaid TANF assistance, emergency assistance, and criteria for determining the availability of child care.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Pursuant to §63.2-217 of the Code of Virginia (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.1-25>), the State Board of Social Services has authority to promulgate rules and regulations necessary for operation of all assistance programs. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (<http://thomas.loc.gov/cgi-bin/query/z?c104:H.R.3734.ENR:>) transformed the welfare system from a mandated system into a block grant with state flexibility. These regulations are necessary for the state to regulate its state TANF program.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

There are several different TANF regulations in Virginia. This regulation replaces them with one regulation, streamlining the TANF regulatory structure. This regulation will simplify the program rules and align many rules with other public assistance programs, leading to more efficient state and local administration and better customer service. These new procedures reduce the administrative burden on local agency personnel as well as applicants and recipients of public assistance. The regulation will serve as a comprehensive program regulation. Other existing TANF regulations will be repealed and included in the proposed regulation, as necessary.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

In 22 VAC 40-295-20, the regulation specifies that a child is eligible if living with a relative. Currently, the child has to be related to the caretaker within the fifth degree of relationship.

The regulation sets the number of days a child can be absent from a home and still retain eligibility for TANF. (22 VAC 40-295-40).

In 22 VAC 40-295-60, the regulation excludes the earned income of students under 18. Currently this income is counted in the gross screening after six months. In the initial eligibility screening for all applicants and ongoing eligibility calculation for non-VIEW participants, a flat dollar amount plus 20 percent of the remainder will be deducted from earned income. The TANF payment shall be suspended if the amount of child support collected by the Division of Child Support Enforcement for two consecutive months, when treated like income, makes the family ineligible for TANF. The TANF case shall be closed if in the month of suspension, the amount of child support collected by the Division of Child Support Enforcement, when treated like income, makes the family ineligible.

In 22 VAC 40-295-70, the beginning date of assistance is set at the date of application. The application must be processed within 30 days.

In 22 VAC 40-295-80, the redetermination time frame is set at 12 months.

Hearings may be requested orally as well as in writing (22 VAC 40-295-120).

The TANF-Emergency Assistance (TANF-EA) (22 VAC 40-295-170) program is simplified by removing prescriptive policy on the use of funds. The old policy stated that only certain merchandise could be purchased, for example, one table, one chair, and one lamp. The \$500 maximum has been retained.

PRWORA forbids a state from sanctioning a TANF recipient for refusal to work if that recipient has a child under the age six and the recipient has a demonstrated inability to obtain needed child care. To this end, federal regulations at 45 C.F.R. 261.56 require states to define "appropriate child care," "reasonable distance," "unsuitability of informal care," and "affordable child care arrangements." This regulation contains these definitions. (22 VAC 40-295-180)

There are also administrative areas that will be altered to make case processing more efficient. Since the same eligibility worker is processing the same information for the same client, reporting requirements and action on changes (22 VAC 40-295-90), and advance notice requirements (22 VAC 40-295-100) have been aligned with other programs.

In 22 VAC 40-295-190, the regulations have been amended to grant the Department of Social Services authority to establish pilot projects to test future changes in program policy.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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, please include a sentence to that effect.

These regulations are designed to make the TANF program more streamlined for ease of administration and better service to program applicants and participants. These regulations take advantage of the flexibility offered by the TANF block grant environment and the authority for states to establish program rules. The regulations have been simplified so they are more easily understood by the public. The primary advantages to the public and the Commonwealth will be a program that is more efficient. The public will have a streamlined and less bureaucratic process of accessing benefits. The regulations also address the issue of pilot programs. Establishing pilot programs will allow the Commonwealth to test the effects of changes prior to making the changes statewide. There are no disadvantages to the public or the Commonwealth.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

This regulation will increase the monthly TANF caseload. However, these increases are balanced with actual monetary savings and significant administrative savings. The overall impact of these regulations on applicants is to reduce administrative processes and rules, so that agencies can focus more on the goal of helping recipients obtain and maintain employment. No costs are expected to be borne by customers.

These regulations will reduce the workload for local departments. These regulations are aimed at simplifying the TANF program and streamlining administration. As such, the following changes will result in reduced time spent on the processing of cases: earned income disregards are simplified, student earnings are disregarded, the method of determining self-employment income is simplified, resources are disregarded, processing time frames, effective dates, and advance and adequate notice requirements have been changed to mirror the food stamp program, and cases are redetermined on an annual basis.

Disregarding student earnings will impact approximately 10 families and will increase costs by \$31,800.

Treating lump sums as income will effect 171 families and will increase costs by \$271,890.

The amended resource rules will effect approximately 40 families and will increase costs by \$127,200.

Changing the beginning date of assistance will increase costs by \$74,817.

Approximately 271 families will be affected by the change in considering support collections. However, there is no net cost for this change as the payment is totally paid by the support collection.

As a result of time savings and efficiencies, total administrative savings for these regulations is estimated at \$2,526,893.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

In 22 VAC 40-295-10, the definition of “affordable child care arrangements” was revised by omitting the volume number of the child care manual. The definition of “application” was revised so that it is not restricted to a written application. The definition of “beginning date of assistance” was removed as it is defined in the text of the regulation. The “caretaker” definition was revised by deleting the examples of relatives. Emancipated children was deleted from the definition of “dependent child.” The definition of “intentional program violation” was amended to include TANF services. The words “lump sum” were removed from the definition of “lump sum” so that the definition is not circular. The definition of resource was removed from the regulation.

In 22 VAC 40-295-30, the words “or minor parent” were removed so that the minor parent is not included in the assistance unit of the minor parent’s parent.

Section 22 VAC 40-295-40 was revised by changing the number of days a child can be absent from 30 to 60. Specific reasons for an absence were changed to the more open-ended “good cause.” Also, special language was added regarding foster care.

Section 22 VAC 40-295-50 was deleted so that resources are disregarded as eligibility criteria for TANF.

In 22 VAC 40-295-60, the regulation has been amended to ensure that when counting income of a person that has been sanctioned, income disregards are available. The regulation also specifies the conditions under which disregards of income are withheld. Requirements for determining eligibility in regard to child support collections were added.

The beginning date of assistance (22 VAC 40-295-70) was revised to the date of application. Processing time frame revisions were made so that the regulation no longer references federal food stamp regulations.

The "certification approach" has been removed from the regulation at 22 VAC 40-295-80. Redeterminations will be conducted every 12 months.

In 22 VAC 40-295-90 and 22 VAC 40-295-100, the regulations no longer reference federal food stamp regulations. Additions were made to 22 VAC 40-295-100 on the required content of notices and additional detailed requirements.

In 22 VAC 40-295-120, the section was changed so that it addressed hearings and not just the request for hearings. Information was added on continuing benefits, client rights, and the content of hearings.

In 22 VAC 40-295-130, changes were made regarding the suspension of overpayment collections. Local departments of social services may suspend the pursuit of collections of overpayments less than \$125 when it is not cost effective. This is consistent with the food stamp program.

In 22 VAC 40-295-160, the sanction periods for clients committing intentional program violations were reduced so that they reflect the penalties that are currently in place. Originally, the regulation would have lengthened the penalties. Also, all allegations of intentional program violations will be addressed administratively prior to pursuing criminal penalties.

A new section was added (22 VAC 40-295-190) which permits the implementation of pilot projects with altered rules.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The regulation will set at 60 the number of days a child can be absent from a home and still retain eligibility for TANF (22 VAC 40-295-40). The current policy states that a child is ineligible if absent from the home for 45 consecutive days. Consideration was given to retaining current policy, retaining the 45 day requirement, lengthening the

requirement, or reducing the requirement. Since assistance is granted on a monthly basis, sixty days was chosen as this is consistent with a monthly measure.

The assistance unit (22 VAC 40-295-20) policy will include caretakers who are related and beyond the fifth degree of relationship. Consideration was given to retaining current policy, but the current method does not provide support to caretakers who are providing a home for a child but are not within the relationship requirements.

Several changes are being made with regard to counting income (22 VAC 40-295-60). The income disregard will be standardized so that it does not fluctuate as in current regulation. Income of students under 18 will be disregarded. Consideration was given to retaining current policy, to change it as proposed, or to adopt a standard percentage deduction. The current policy is overly complex for workers and clients because the disregarded amount fluctuates depending upon the length of time the participant has received assistance. Adopting a standard percentage deduction is much simpler, but there are unknown cost implications. The pilot project requirements included in this regulation will permit the Department of Social Services to truly determine the cost impact. The proposed change is consistent with other public assistance programs, is simpler to apply, and has limited fiscal impact.

Consideration was given to retaining current student earnings disregards, expanding them, or reducing them. The option chosen was to totally disregard student earnings. This encourages employment and the development of work skills for a child that is also in school. Due to the very small numbers of employed students, this will have a negligible cost impact while reducing the administrative burden.

The area of resources will be streamlined (22 VAC 40-295-50) by eliminating resource criteria. Consideration was given to retaining current policy, expanding resource disregards, or eliminating resource criteria. Resource criteria can be eliminated with little effect on the caseload, while significantly simplifying the program for the client and agency personnel.

The TANF-Emergency Assistance (TANF-EA) (22 VAC 40-295-170) program is simplified by removing prescriptive policy on the use of funds. The old policy stated that only certain merchandise could be purchased, for example, one table, one chair, and one lamp. The \$500 maximum has been retained. The maximum amount was retained so that there would be no costs to the program. Consideration was given to retaining all program rules for TANF-EA, but it was found to be overly cumbersome and prescriptive.

PRWORA forbids a state from sanctioning a TANF recipient for refusal to work if that recipient has a child under the age six and the recipient has a demonstrated inability to obtain needed child care. To this end, federal regulations at 45 C.F.R. 261.56 require states to define "appropriate child care," "reasonable distance," "unsuitability of informal care," and "affordable child care arrangements." This regulation contains these definitions (22 VAC 40-295-180). These definitions were adopted to reflect reasonable expectations for agencies and clients.

Advance notice requirements (22 VAC 40-295-100) are altered to allow a non-specific notice if the change is due to a mass change. Current policy requires a specific notice in these situations. The specific notice delays processing and adds an administrative burden to the agency. This change is consistent with other public assistance programs.

Hearing request requirements (22 VAC 40-295-120) have been altered to allow applicants and recipients to appeal actions either orally or in writing. Currently, appeals may be only filed in writing. The current method was rejected in favor of the changed method which allows easier access to hearings. It is consistent with other public assistance programs and is fairer to the client.

The regulations have been amended to grant the Department of Social Services to establish pilot projects (22 VAC 40-295-190) with deviations in program rules. This will allow the Department on Social Services to test alternative requirements on a limited basis. This method was chosen to allow an evaluation of changes prior to the imposition on a statewide basis.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

One comment was received during the NOIRA comment period which suggested that clients wishing to appeal an adverse action be allowed to request such an appeal verbally. Currently, TANF recipients must request appeals in writing. However, the food stamp program allows verbal requests. The agency agrees with this suggestion, and the proposed regulation permits verbal requests for appeals.

Additional comments were received during the proposed regulation public comment period.

Comment: The proposal to require the minor parent to be included in the assistance unit of the minor parent's parent should be rejected.

Agency response: The regulation has been changed so that it does not require the minor parent to be included in the assistance unit of the minor parent's parent.

Comment: The proposal to lengthen the sanction period for clients committing intentional program violations should be rejected.

Agency response: The regulation has been changed so that sanction periods have not been lengthened for clients committing intentional program violations

Comment: The proposed regulation could be interpreted to eliminate TANF benefits for caretakers whose only child is receiving Supplemental Security Income (SSI). To clarify that this is not the case, the proposed regulations should be revised to treat caretakers of children receiving SSI like caretakers of children receiving foster care payments.

Agency response: The regulation has been amended.

Comment: By omitting any reference to motor vehicles, the proposed regulations actually make it more difficult for families entering the TANF program to retain ownership of a car.

Agency response: All resources are disregarded.

Comment: A child support disregard should be implemented which is phased out as the family income approaches the poverty line, paralleling the earned income disregard in the VIEW program.

Agency response: State code established a supplemental payment which allows recipients of TANF to receive a payment in the amount of current support paid. In effect, TANF recipients receive child support paid on their behalf.

Comment: Currently, when a sanctioned parent is excluded from an assistance unit, the parent's income and resources are taken into account in determining the eligibility and payment amount for the remaining members of the assistance unit; however, such income and resources are subject to the same exclusions and disregards that would have applied if the parent were included in the assistance unit.

Agency response: The regulation has been amended to ensure that when counting income of a person that has been sanctioned, income disregards are available. The regulation also specifies the conditions under which disregards of income are withheld.

Comment: The "certification approach" to eligibility redetermination used in the food stamp program has created many problems for both local agencies and recipients, including unnecessary paper work, increased opportunities for errors, and excessive time lost from the job by low wage workers. By establishing a fixed period for benefit eligibility, the "certification period" approach will deny children and their families who are dependent on TANF benefits for their basic subsistence any opportunity to receive assistance while the State Hearing Authority reviews a local agency's eligibility determination at the end of a "certification period." By establishing a fixed period for benefit eligibility, the "certification period" may violate existing welfare reform waivers and make thousands of VIEW participants ineligible for TANF.

Agency response: The "certification approach" has been removed from the regulation.

Comment: The proposed regulation providing that a parent otherwise required to work will not be sanctioned for failure to do so if child care is unavailable should be revised to provide for notice to parents as required by federal law.

Agency response: This is a federal requirement found at 45 CFR 261.56. As the state is already subject to this regulation, it is not necessary to repeat this in the state regulation.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The Department of Social Services, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Department of Social Services will review the regulation to determine if it should be continued, amended, or terminated. These regulations are aimed at streamlining and simplifying the TANF Program as well as focusing on strengthening the family and encouraging self-sufficiency. These regulations will be reviewed to determine if further simplification is needed and if any changes are necessary that will strengthen TANF families. Such review will be initiated by October 1, 2007, or four years after the effective date of this regulation, whichever is earlier.