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Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40 -295
Regulation title	Temporary Assistance for Needy Families
Action title	Establish Temporary Assistance for Needy Families (TANF)
Document preparation date	Enter date this form is uploaded on the Town Hall

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

Currently, there are several separate regulations addressing TANF, and these regulations are in the process of being amended or repealed. The new regulation, 22 VAC 40-295, will replace the old regulations, simplify program rules and align many rules with other public assistance programs. Substantive changes include: (i) simplifies eligibility rules regarding a child's having to reside with a relative and increases the time a child can be out of the home and remain eligible; (ii) excludes the earned income of students under 18; (iii) establishes the beginning date of assistance and redetermination time frame; (iv) clarifies provisions for hearings; (v) simplifies TANF-Emergency Assistance; (vi) adds definitions related to child care to comply with federal regulations; and (vii) provides authority for the Department of Social Services to establish pilot projects to test future program changes.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The State Board of Social Services approved the final action on 22 VAC 20-295, Temporary Assistance for Needy Families, on February 18, 2004.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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 explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

TANF provides assistance to needy eligible families in order to assist them in meeting basic needs. The new TANF regulation provides for more consistent and efficient administration of TANF, and is therefore essential to protecting the welfare of citizens. There are several different TANF regulations in Virginia. This regulation replaces them with one regulation, therefore 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 also serve as a comprehensive program regulation, and 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. A more detailed discussion is required under the "All changes made in this regulatory action" section.

22 VAC 40-295-10: 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." Definitions for these terms have been added.

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

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

22 VAC 40-295-50: 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.

22 VAC 40-295-60: The beginning date of assistance is set at the date of application. The application must be processed within 30 days.

22 VAC 40-295-70: The redetermination time frame is set at 12 months.

22 VAC 40-295-80 and 22 VAC 40-295-90: Some administrative areas 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, and advance notice requirements have been aligned with other programs.

22 VAC 40-295-110: Hearings may be requested orally as well as in writing

22 VAC 40-295-150: The TANF-Emergency Assistance (TANF-EA) 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.

22 VAC 40-295-170: The regulation provides the Department of Social Services authority to establish pilot projects to test future changes in program policy.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

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.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement in proposed regulation	Proposed change in final regulation and rationale
10	The definition of "Affordable child care arrangements" referred to the Virginia Department of Social Services Day Care program.	The name of the program was changed from “day care” to “child care” as this is the actual name of the program.
90	Reference is made to the client notice.	To be more specific, the regulation is amended to refer to the “notice of adverse action.”
90	Though it is the policy that is in practice, the proposed regulation did not address continued assistance during an appeal and the content of the notice of adverse action.	The regulation includes continued assistance during an appeal and the content of the notice of adverse action. This formalizes in the regulation the current policy that is implemented by the Department of Social Services.

110	The regulation omitted the time frame for filing an appeal that is currently the policy of the TANF program.	The regulation now includes the time frame for filing an appeal. This formalizes in the regulation the current policy that is implemented by the Department of Social Services.
170	A provision was added to allow the Department of Social Services to implement pilot projects.	The provision has been changed to be less broad and to include some safeguards for TANF recipients.

Public comment

Please summarize all comment received during the public comment period following the publication of the proposed stage, and provide the agency response. If no public comment was received, please so indicate.

Commenter	Comment	Agency response
Steven Myers	Clients wishing to appeal an adverse action be allowed to request such an appeal verbally.	The agency agrees with this suggestion, and the final regulation permits verbal requests for appeals.
Steven Myers	The proposal to require the minor parent to be included in the assistance unit of the minor parent's parent should be rejected.	The final 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.
Steven Myers	The proposal to lengthen the sanction period for clients committing intentional program violations should be rejected.	The regulation has been changed so that sanction periods have not been lengthened for clients committing intentional program violations.
Steven Myers	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.	The regulation has been amended.
Steven Myers	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.	All resources are disregarded.

<p>Steven Myers</p>	<p>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.</p>	<p>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.</p>
<p>Steven Myers</p>	<p>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.</p>	<p>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.</p>
<p>Steven Myers</p>	<p>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</p>	<p>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.</p>

	benefit eligibility, the "certification period" may violate existing welfare reform waivers and make thousands of VIEW participants ineligible for TANF.	
Steven Myers	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.	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.
Steven Myers	The repropoed regulations contain no requirements at all concerning the content that must be included in a notice of adverse action and make no clear provision for recipients to receive benefits pending appeal. The repropoed regulation does not require that TANF recipients be given information concerning the reason for a change in benefits.	The regulation has been amended to include requirements regarding content and to provide for continued benefits pending an appeal. The regulation requires that TANF recipients be given information concerning the reason for a change in benefits.
Steven Myers	The repropoed regulation should include time limits for hearing requests and decisions.	The regulation has been amended to include time limits for hearing requests and decisions.
Steven Myers	In addition, the reference to "recommendations" by hearing officers in subparagraph "H" is confusing, inconsistent with the definition of "hearing officer" in the repropoed regulation, and should be deleted.	The regulation has been amended by removing references to recommendation of hearing officers.
Steven Myers	The provision for pilot projects in the repropoed regulation is overly broad and should include safeguards for TANF recipients.	The regulation has been amended to restrict the pilot project language. Appeal rights are maintained and pilot program rules may not reduce assistance to TANF families. Pilot programs are restricted to two years in duration.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	10		<p>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.</p> <p>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.” Definitions for these terms have been added.</p>
	20	To be eligible, the child has to be related to the caretaker within the fifth degree of relationship	The regulation specifies that a child is eligible if living with a relative. This simplifies the eligibility process and eliminates the arbitrary restriction on degree of relationship.
	30	Minor parent was included in the assistance unit.	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.
	40	A child is ineligible if absent from the home for 45 consecutive days.	The regulation sets at 60 the number of days a child can be absent from a home and still retain eligibility for TANF. This time period is commensurate more compatible with monthly eligibility.
	50	Currently, the income of a student is counted in the gross screening after six months.	To encourage student employment, the regulation excludes the earned income of students under 18.

		<p>In the initial eligibility screening for all applicants and ongoing eligibility calculation, the following is deducted from earned income: \$90, \$30 plus one-third of the remainder for four months, and \$30 for eight months.</p> <p>The TANF payment shall be suspended if the amount of child support collected by the Division of Child Support Enforcement, when treated like income, makes the family ineligible for TANF.</p>	<p>To simplify processing by aligning the disregard policy with the Food Stamp program, 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.</p> <p>Because child support collections are often inconsistent, a TANF case is closed due to child support collections, but the family has to reapply when child support does not continue. This policy change will delay the closure until a pattern of child support receipt has been established. 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.</p>
	60	<p>If an application is approved in the month of application, the beginning date of assistance is the date of approval. If the application is approved after the month of application, the beginning date of assistance is the first of the month of the month after application receipt. The application must be processed within 45 days.</p>	<p>To simplify the policy and to speed processing for a very vulnerable population, the beginning date of assistance is set at the date of application. The application must be processed within 30 days.</p>
	70	<p>All cases must be redetermined every 6 months.</p>	<p>The redetermination time frame is set at 12 months. This will streamline the program and reduce cumbersome</p>

			procedures associated with re-evaluating eligibility.
	90	The agency must provide a notice prior to reducing or terminating assistance.	Reference to client notice is changed to “notice of adverse action,” to be more specific.
	110	Hearings must be requested in writing.	Hearings may be requested orally as well as in writing. Information was added on continuing benefits, time frame for filing appeals, client rights, and the content of hearings.
	120	Local agencies must recoup or recover any overpayment from recipients. Overpayments less than \$35 shall be waived at a specified point.	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.
	140		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.
	150	In emergency situations, TANF-Emergency Assistance may be issued. Only certain merchandise can be purchased, for example, one table, one chair, one lamp.	The program is simplified by removing prescriptive policy on the use of funds. This will remove the barrier of accounting for the individual expenses of items and will ease access to benefits by those that have been affected by natural disaster or fire.
	170		A provision was added to allow the Department of Social Services to implement pilot projects.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

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 streamline rules and ease the process of navigating the cumbersome process of applying and determining eligibility for public assistance. These changes will benefit vulnerable families and make supports more accessible. This will strengthen vulnerable families.