



## Final Regulation Agency Background Document

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| <b>Agency name</b>                                 | State Board of Social Services                              |
| <b>Virginia Administrative Code (VAC) citation</b> | 22VAC40-880   |
| <b>Regulation title</b>                            | Child Support Enforcement Program                           |
| <b>Action title</b>                                | Child Support Enforcement Regulation Comprehensive Revision |
| <b>Date this document prepared</b>                 | December 11, 2013   |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

Changes to 22VAC40-880 will: repeal numerous sections that are either duplicative of state or federal law or serve no purpose; amend sections to update language to reflect statutory changes, use current terminology and clarify the child support program; and, streamline the regulation in accordance with Executive Order 14 (2010).

### 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 or board taking the action, and (3) the title of the regulation.*

The State Board of Social Services took final action on 22VAC40-880, Child Support Enforcement Program, on December 11, 2013.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

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Sections 63.2-217 and 63.2-1901 of the Code of Virginia (Code) provide the legal authority of the Board to promulgate regulations for the child support enforcement program.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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The child support regulation supplements the statutory law by providing a framework to promote the efficient and accurate administration of the child support program. The efficient and accurate administration of the program is critical to the health and well-being of children on whose behalf the funds are collected and disbursed. The primary functions of the child support program include locating noncustodial parents, establishing paternity, establishing and modifying child support orders and enforcing support obligations. This proposed action is the result of a comprehensive review of the child support regulation. The regulation has not been thoroughly reviewed since 2002. Statutory and program changes since that time required a complete review of all portions of the regulation to reflect current federal and state legislative and program requirements.

## 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.*

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The regulatory action primarily involves removing numerous sections which are duplicative of existing state and federal law and federal regulations, updating obsolete terms with current terminology, clarifying the remaining sections by making the regulation easier to read and understand for the user. As a result, there are no substantive changes, except for 22VAC40-880-405, Passport Denial, which is amended to provide for an appeal process to circuit court pursuant to the Set-off Debt Collection Act.

## 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 there are no disadvantages to the public or the Commonwealth, please indicate.*

The primary advantages of this final regulatory action to the public are to streamline the administrative code, remove unnecessary language, correct incorrect cites and clarify the program. These are no disadvantages to the public.

The primary advantages to the agency and the Commonwealth are to streamline and clarify the regulation and remove unnecessary provisions. There are no disadvantages to the agency or the Commonwealth.

There are no other pertinent matters of interest associated with the final regulation.

**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.*

| <b>Section number</b> | <b>Requirement at proposed stage</b>                       | <b>What has changed</b>   | <b>Rationale for change</b>                    |
|-----------------------|--|---|--|
| 10                    | Correct definitions  | Typographical errors or style issues identified: several changes were made incorrectly or not at all. | Accurately describe current program operation. |
| 20                    | Clarify services for customers                             | Typographical errors or style issues identified: several changes were made incorrectly or not at all. | Accurately describe current program operation. |
| 190                   | Standardize terminology throughout regulation              | Typographical errors or style issues identified: several changes were made incorrectly or not at all. | Accurately describe current program operation. |
| 240                   | Clarify program operations                                 | Typographical errors or style issues identified: several changes were made incorrectly or not at all. | Accurately describe current program operation. |
| 320                   | Clarify alternative payment arrangement must be in writing | Typographical errors or style issues identified: several changes were made incorrectly or not at all. | Accurately describe current program operation. |
| 350                   | Standardize terminology throughout regulation              | Typographical errors or style issues identified: several changes were made incorrectly or not at all. | Accurately describe current program operation. |
| 430                   | Clarify program operations                                 | Typographical errors or style issues identified: several changes were made incorrectly or not at all. | Accurately describe current program operation. |
| 560                   | Standardize terminology throughout regulation              | Typographical errors or style issues identified: several changes were made incorrectly or not at all. | Accurately describe current program operation. |

**Public comment**

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

No public comments were received.

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe 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                     |  | Provides definitions of the terms used in the regulation. | <p>Removes terms “absent parent”, “administrative”, “AFDC”, “AFDC/FC”, “assignment”, “custodial parent”, “debt”, “department”, “erroneous payment”, “foreclosure”, “genetic testing”, “health insurance coverage”, “interest”, “judicial”, “local social services agency”, “mistakes of fact”, “noncustodial parent”, “obligee”, “obligor”, “public assistance”, “reasonable cost”, “subpoena”, “subpoena duces tecum”, “Supplemental Security Income”, “support order” and “TANF” because these terms are defined in the Code (Code) of Virginia, have commonly used meanings that does not require further definition or are obsolete.</p> <p>Adds the term “federal foster care” to replace “AFDC/FC”, an obsolete term.</p> <p>Adds the term “parent” to clarify that, when used in the regulation, it can refer either a custodial or a noncustodial parent.</p> <p>Clarifies definitions for “child support guideline”, “enforcement”, “good cause”, “hearings officer”, “locate services”, “pendency of an appeal” and “recipient.”</p> <p>Removed Code site in definition of “enforcement” which is unnecessary.</p> <p>Corrected revised definition of “good cause”.</p> <p>Corrected definition of “hearing officer” to</p> |

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|     |  |   | <p>remove “s” from “hearings”.</p> <p>Corrected transposed word order in definition of “IV-D agency”.</p> <p>Corrected definition of “pendency of an appeal” to remove “final”.</p>   |
| 20  |  | Describes child support services.   | <p>Moves “locate services” from 140 to be listed with other services not already listed in the Code.</p> <p>Changes “clients” to “customers”.</p> <p>Changes “custodial parents” and “noncustodial parents” to “parents”.</p> <p>Clarifies services available to Medicaid-only customers.</p> <p>Changes “clients” to “customers” to reflect current terminology.</p> |
| 30  |  | Describes eligibility for child support services.                                 | Repeal. This information is found in §§ 63.2-1904, 1908 and 1909. Additionally, paragraph (C) is found in §20-88.33 et seq. the interstate statute also known as UIFSA.   |
| 40  |  | Describes the assignment of rights required by TANF recipients.                   | Repeal. This information is found in § 63.2-1908.   |
| 50  |  | Describes the Division’s authority to seek or enforce a child support obligation. | Repeal. This information is found in § 63.2-1904.   |
| 60  |  | Describes special conditions for individuals who receive TANF.                    | Repeal. This information is found in § 63.2-1908.   |
| 70  |  | Describes the application fees for those seeking child support services.          | Repeal. This information is found in § 63.2-1904.   |
| 80  |  | Describes the application process for child support services.                     | Repeal. This information is found in 45 CFR 303.2 and the program manual.   |
| 90  |  | Describes the Division’s case assessment process.                                 | Clarifies the case assessment process.  |
| 100 |  | Describes the case prioritization process.  | Clarifies the prioritization process by making this section more general. More specific provisions are in Chapter 12 (N) of the program manual.   |
| 110 |  | Describes the necessity for service of process.                                   | Repeal. This information is found in 45 CFR 303.3.  |
| 120 |  | Describes the Division’s authority to summons parties administratively.           | Repeal. This information is found in § 63.2-1903.   |
| 130 |  | Describes the Division’s authority to assess and recover costs associated         | Repeal. This information is found in § 63.2-1960.   |

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|     |  | with the provision of child support services.   |   |
| 140 |  | Describes the location services provided in child support cases.  | Repeal. This information was moved forward and added to 20 and is found in 45 CFR 303.  |
| 150 |  | Describes the sources available to obtain information to locate individuals for child support purposes. | Repeal. This information is found in § 63.2-1902. Specifics sources are found in the program manual.  |
| 160 |  | Describes the time requirements to locate parents.  | Repeal. This information is found in 45 CFR 303.3 and 303.7.  |
| 170 |  | Describes the process to establishing paternity.  | Repeal. This information is found in §§ 20-49.1 et seq. and 63.2-1913. Specific procedures are in the program manual.   |
| 180 |  | Describes the process for establishing paternity in interstate cases.                                   | Repeal. This information is found in § 20-88.78.  |
| 190 |  | Describes the process to administratively establish a child support obligation.                         | Removes paragraphs A, B, C, G and H. This information is found in §§ 63.2-1903 and 1916.<br><br>Corrected "hearing officer" to remove "s" from "hearings".  |
| 200 |  | Describes the process to determine the amount of the child support obligation.                          | Repeal. This information is found in §§ 63.2-1916, 63.2-1919 and 34-29. Specific procedures are in the program manual.  |
| 210 |  | Describes the requirement for service of the administrative support order.                              | Repeal. This information is found in § 63.2-1916.   |
| 220 |  | Describes authority to order medical support for children.  | Repeal. This information is found in §§ 63.2-1903, 1916 and 1924.1.   |
| 230 |  | Describes the Division's use of the child support guideline.  | Repeal. This information is found in §§ 63.2-1918 and 20-108.2.   |
| 240 |  | Describes authority for administrative deviation from the child support guideline.                      | Removes paragraph 1 as this information is found in § 20-108.2.<br><br>Adds "natural or adoptive" to modify "parent" to clarify that only natural or adoptive parents can be obligated for child support.<br><br>Additionally, §§ 20-108.1, 20-108.2 and 63.2-1918 govern this topic.<br><br>Subsection 1 (c) was not initially deleted as requested. Change corrects this error. |
| 250 |  | Describes process for periodic review of the child support obligation.                                  | Clarifies the section to be more specific and to comport with existing statutory and case law.<br><br>Changes "special circumstance" to "material   |

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|     |  |  | <p>change of circumstance” to match language in the Code.</p> <p>Adds “adoptive or natural” to indicate only those parents can be obligated for support.</p> <p>Replaces “dependent care” with “employment-related child-care costs” as that term is used in § 20-108.2.</p> |
| 260 |  | Describes enforcement remedies.  | Repeal. This information is found specifically in § 63.2-1932.1 as well as throughout Articles 5 and 6 of Chapter 19 of Title 63.2. There are specific procedures in Chapters 19 and 20 of the program manual.   |
| 270 |  | Describes withholding of income process.   | Repeal. This information is found in §§ 63.2-1923 and 1924.  |
| 280 |  | Describes withholding of income process for administrative support orders.                 | Repeal. This information is found in § 63.2-1923.  |
| 290 |  | Describes process to determine the amount to be applied for the liquidation of arrearages. | <p>Clarifies the language for ease of understanding.</p> <p>Adds appropriate statutory authority.</p>  |
| 300 |  | Describes payment arrangement as alternative to income withholding.                        | Repeal. This information is found in § 63.2-1923.  |
| 310 |  | Describes Division’s authority to pursue enforcement remedies.                             | Repeal. This information is found in §§ 63.2-1901, 1902, 1904 and 1916 as well as in Article 6 of Chapter 19 of Title 63.2.  |
| 320 |  | Describes process to initiate withholding of income.                                       | <p>Clarifies authority to initiate income withholding and added relevant Code sections, §§ 63.2-1923 and 1924.</p> <p>Corrects original change that was not reflected that alternative payment arrangement must be in writing.</p>   |
| 330 |  | Describes liens for child support.   | Repeal. This information is found in §§ 63.2-1927, 1928 and 1935.  |
| 340 |  | Describes Division’s authority to issue orders to withhold and deliver.                    | Repeal. This information is found in §§ 63.2-1929, 1931 and 1932.1.  |
| 350 |  | Describes process of distraint, seizure, and sale.   | <p>Adds current term “arrearage.”</p> <p>Removes last sentence of E. which is not accurate.</p> <p>Adds appropriate statutory authority.</p> <p>Changes “arrears” with “arrearage” in two instances to reflect current terminology.</p>                                      |
| 360 |  | Describes authority to intercept unemployment  | Repeal. This information is found in §§ 63.2-1941, 34-29 and 15 USC 1673 (b).  |

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|     |  | compensation benefits.   |  |
| 370 |  | Describes Division's use of bonds, securities, and guarantees.           | Repeal. This information is found in § 63.2-1936. Specific provisions are in the program manual.   |
| 380 |  | Describes tax intercept process.   | Updates current terminology.<br><br>Removes reference to Internal Revenue Code.<br><br>Adds appropriate statutory authority.   |
| 385 |  | Describes license suspension process.                                    | Repeal. This information is found in §§ 46.2-320 and 63.2-1937.  |
| 390 |  | Describes additional enforcement remedies.                               | Clarifies use of federal enforcement remedies.   |
| 405 |  | Describes the passport denial program.                                   | Adds language setting out appeal rights for passport denial program.<br><br>Adds appropriate statutory authority.  |
| 410 |  | Describes the enforcement remedies to be used against federal employees. | Simplifies language, clarifies that current and retired federal employees are subject to these remedies.<br><br>Adds current Code cites.   |
| 420 |  | Describes authority to administratively appeal agency actions.           | Repeal. This is a generic title section with no substantive provisions.  |
| 430 |  | Describes determination of validity of the appeal.                       | Adds "administrative" to clarify this provision applies to administrative appeals.<br><br>Clarifies exception for tax intercepts.<br><br>Adds current statutory authority.<br><br>Changes "working" days to "business" days. |
| 440 |  | Describes general rules for appeals.                                     | Removes paragraphs D, E and F.<br><br>Corrects obsolete Code cite.<br><br>Changes "parties" to "parents" to be consistent with definitions section.<br><br>Additional information is found at § 63.2-1942.                   |
| 450 |  | Describes appeal process for enforcement actions.                        | Repeal. Each enforcement remedy in the Code contains its own appeal process.   |
| 460 |  | Describes appeal process for federal enforcement remedies.               | Repeal. This information is found in § 58.1-528.   |
| 470 |  | Describes long-arm authority of Division.                                | Repeal. This information is found in §§ 63.2-1902 and 1903.  |
| 480 |  | Describes Division's cooperation with other state IV-D agencies.         | Corrects obsolete Code section reference.  |
| 490 |  | Describes the central registry for interstate cases.                     | Repeal. This information is found in § 63.2-1902.  |



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| 500 |  | Describes how information is collected from state, county, and city offices. | Repeal. This information is found in § 63.2-1902.   |
| 510 |  | Describes authority to subpoena financial information.                       | Repeal. This information is found in § 63.2-1903 (F).   |
| 520 |  | Describes agencies to which the department releases information.             | Repeal. This information is found in § 63.2-1902.   |
| 530 |  | Describes release of information to and from the internal revenue service.   | Repeal. This information is found in § 63.2-1906.   |
| 540 |  | Describes responses to requests for information from the general public.     | Repeal. This information is found in § 2.2-3700 et seq. also known as the Freedom of Information Act (FOIA).  |
| 550 |  | Describes responses to requests for information from parents.                | Repeal. This information is found in § 2.2-3800 et seq. also known as the Government Data Collection and Dissemination Practices Act.   |
| 560 |  | Describes Division's release of health insurance information                 | Corrects incorrect Code cite.<br><br>Changes AFDC/FC to "federal foster care" to use current terminology.<br><br>Changes "clients" to "customers" to reflect current terminology. |
| 570 |  | States custodial parents have rights and responsibilities.                   | Repeal. This section is superfluous and contains no substantive provisions.   |
| 580 |  | Describes custodial parent's rights.   | Repeal. This information is contained in the application for services and is also in the program manual.  |
| 590 |  | Describes custodial parent's responsibilities.                               | Repeal. This information is contained in the application for services and is also in the program manual.  |
| 600 |  | Describes the Department's rights.   | Repeal. This provision does not add anything to the Department's obligation in state and federal statute and federal regulations.   |
| 610 |  | Describes the Department's responsibilities.                                 | Repeal. There is no authority for this provision.   |
| 620 |  | Describes disbursement of payments.  | Repeal. This information is found in § 63.2-1954. This information is also found in the program manual.   |
| 630 |  | Describes treatment of bad checks.   | Repeal. This information is found in the program manual.  |
| 640 |  | Describes treatment of erroneous or duplicate disbursements.                 | Repeal. This information is found in the program manual.  |
| 650 |  | Describes methods of payment recovery from the custodial parent.             | Repeal. This information is found in the program manual.  |
| 660 |  | Describes authority to discharge debt.                                       | Repeal. This information is found in § 63.2-1958.   |
| 670 |  | Describes general rules to stop providing services.                          | Repeal. The Code of Federal Regulations controls these situations.  |

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| 680 |  | Describes recovery of fees associated with child support cases.                    | Repeal. This information is found in § 63.2-1960. |
| 690 |  | Describes recovery of attorney's fees for enforcement of child support cases.      | Repeal. This information is found in § 63.2-1960. |
| 700 |  | Describes assessment of fees for genetic testing.                                  | Repeal. This information is found in § 63.2-1960. |
| 710 |  | Describes assessment of fees in intercept programs.                                | Repeal. This information is found in § 63.2-1960. |
| 720 |  | Describes assessment of fees associated with service of process, seizure and sale. | Repeal. This information is found in § 63.2-1960. |