



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Department of Social Services
VAC Chapter Number:	22 VAC 40-880-10 et. seq.
Regulation Title:	Child Support Enforcement Program
Action Title:	Amend
Date:	February 20, 2002

Please refer 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* for more information and other materials required to be submitted in the final regulatory action package .

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The regulation is being amended to accurately reflect the current child support enforcement program. This regulation became effective February 1990, and it was last updated in 1995. These changes are necessary to incorporate new state and federal legislation into the current regulation. No substantive changes have been made since the proposed action was published.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

The State Board of Social Services accepted for final review and adopted the proposed amended regulation governing the *Child Support Enforcement Program* on February 20, 2002.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describes 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, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

This regulation exists to inform the public of the process used by the Virginia Department of Social Services to administer the Child Support Enforcement program. Title 63.1 Welfare (Social Services) of the Code of Virginia places the responsibility for providing child support enforcement services with the Department of Social Services. The Board of Social Services is given the authority to make rules and regulations in 63.1-25 of the Code of Virginia. The State Board shall establish guidelines to implement the Department's responsibilities. The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation, which comports with applicable state and/or federal law.

The web site address for the Code of Virginia is <http://leg1.state.va.us.000src.htm>.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final 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.

These amendments will implement required state and federal laws and provide for improved effectiveness in child support enforcement program operation. Collection of child support debts benefits all citizens of the Commonwealth, particularly its children. Further, collection of delinquent child support in public assistance cases results in a reduction of legal debts to the state, thus contributing to the General Fund. The amendments to the regulation will accurately reflect the current Child Support Enforcement program.

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 of the regulatory action's detail.

Most of the changes contained in the proposed amended regulation have already been incorporated into the Department's procedures. The changes are: (1) Definition for interest added (proposed 22 VAC 40-880-10); (2) The department may request DMV to suspend or refuse to renew the drivers' license of a person who fails to comply with a subpoena, summons, or warrant relating to paternity or child support proceedings (proposed 22 VAC 40-880-120); (3) When a putative father does not sign a sworn statement of paternity or does not voluntarily submit to genetic blood testing, the department shall order the putative father to submit to genetic testing (22 VAC 40-880-170); (4) All child support orders to include a provision for medical support if the coverage is available at a reasonable cost (22 VAC 40-880-220); (5) Additional enforcement remedies including interest, license suspension, financial institution data match, and high-volume administrative enforcement when possible for interstate cases (22 VAC 40-880-260); (6) Allows electronic transmission of income withholding order on the employer, and the employer is to provide a copy to the employee (22 VAC 40-880-270); (7) Liens arise by operation of law (22 VAC 40-880-330); (8) The Department may petition the court to suspend any license, certificate, registration, or other authorization to engage in a business, trade, profession, occupation, recreation or sporting activity issued to an obligor who is delinquent in the payment of child support by a period of ninety days or more or for \$5,000 or more. The Department may order the Department of Motor Vehicles to suspend or refuse to renew the drivers' license of an obligor delinquent in the payment of child support by ninety days or more or for \$5,000 or more (22 VAC 40-880-385); (9) The Department shall release information concerning the noncustodial parent to consumer credit agencies (22 VAC 40-880-520); (10) When a protective order has been issued or the Department otherwise finds reason to believe that a party is at risk of physical or emotion harm from the other party, information other than the name of the party at risk shall not be released (22 VAC 40-880-550); (11) The Department may require advance payment for subsequent genetic testing when the original results are contested (22 VAC 40-880-700).

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the

new provisions; 2) the 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.

The public will benefit from knowledge of the current process. The agency and Commonwealth will benefit by knowing that the regulation is updated and accurate. There are no disadvantages to the public, agency, or Commonwealth because of the changes made to this regulation.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

There have been minor editorial changes made to the text of the proposed regulation since its publication.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

The Department received one public comment via email from a noncustodial parent. His issues were primarily case specific within the area of medical insurance. The Agency assured him that the Child Support Enforcement Program is examined on a routine basis (Triennial Guideline Review Panel). We also informed him that the specific issue of medical insurance and medical support in general, is the topic of local and national workgroups that meet regularly to insure a more uniform, cohesive and effective social service program. To provide the highest quality of customer service, we asked the noncustodial parent to contact his local child support office, and provided him with our handbook, *Child Support and You*, to assist him.

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 crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

The following substantive changes are being proposed:

Chapter 880 – Child Support Enforcement Program Appendix

Part IX is amended to properly identify recipient as referenced throughout the proposed regulation.

Proposed 22 VAC 40-880-10

The definition for “AFDC” is amended to reference definition for TANF.

The definition for “absent parent” is amended to reflect current Code of Virginia

The definition for “administrative” is amended to include all administrative functions.

The definition for “appeal” is amended to encompass all appeal types.

The definition for “application” is amended to reflect all recipients.

The definitions for “assignment” and “delinquency” have been expanded to include all support types.

The definitions for “custodial parent” and “debt” are amended to include new definitions referenced in the proposed regulation.

The definition for “division” is amended to include additional terminology.

The definition for “erroneous payment” is amended to reflect new definitions as appropriate.

The definition for “financial statement” is amended to clarify intended parties.

The definition for “genetic testing” is amended to correctly reflect §63.1-250.1:2 of the Code of Virginia.

The definition for “health insurance coverage” is amended to accurately reflect both parents.

The definition for “hearings officer” is amended to specify type of actions addressed by the Hearing officer.

The definitions for “local social service agency” and “public assistance” are modified to reflect AFDC program name change to TANF.

The definitions for “location” and “mistake of fact” are amended to properly identify obligor as referenced in this proposed regulation.

The definition for “obligation” is amended to reflect obligor as referenced throughout this proposed regulation. The definition is also amended to identify both court and administrative obligations.

The definition for “pendency of appeal” is amended to identify both court and administrative processes.

The definition for “recipient” is amended to include all case types.

The definition for “service or service of process” is amended to broaden the definition of person (s) that may require service of process.

The definition for “default obligation” is being deleted as it refers to a method of obligation that no longer exists.

The definition for “disregard payment” is being deleted as this payment no longer exists.

The definitions for “applicant”, “arrear or arrearage”, “case summary”, “Child Support Guideline”, “good cause”, “interest”, “judgement rate”, “noncustodial parent”, “occupational license”, “obligee”, “obligor”, “recreational license”, “subpoena”, “subpoena duces tecum”, “Summary of facts”, “support order”, and “TANF”, have been added because they are referenced in the proposed regulation, or are needed for clarification.

Proposed 22 VAC 40-880-30

“Section A:”

Clarified language relating to the requirement for TANF and AFDC/FC applicants/recipients to assign rights to support to the state as a condition of eligibility

Changed language that limited basic services to custodial parents to include noncustodial parents

Clarified that when cases close to TANF or AFDC/FC, the department may keep a case open to collect arrears owed to the state

Removed the limitation of accepting applications from out of state residents to comply with federal regulations

“Section B:”

Clarified that DCSE may only accept an application for child support services for a child over age 18 when there is a court order for support of the individual (e.g., arrangements for handicapped dependents or for post secondary education)

Removed the requirement that the dependent on a child support case must live with the applicant

“Section C:”

Changed who is entitled to locate only services to comply with federal regulations and the Personal Responsibility and Work Reconciliation Act of 1996 (PRWORA)

Proposed 22 VAC 40-880-60

Removed language relating to distribution of support collected to comply with PRWORA provisions. This allows payments for arrears to be distributed to families first.

Proposed 22 VAC 40-880-80

Changed language throughout to include persons other than custodial parents who may apply for services.

Proposed 22 VAC 40-880-110

Simplified language to state that the department shall use diligent efforts to serve process as allowed by law

Deleted detailed information on the methods of service and “diligent efforts”

Proposed 22 VAC 40-880-120

Revised section on administrative summons to include all parties that are able to provide essential information necessary for the collection of child support. A penalty was added for failure to comply with the administrative summons, subpoena, warrant, or writ of capias relating to paternity or child support proceedings pursuant to § 46.2-320 of the Code of Virginia.

Proposed 22 VAC 40-880-130

“Section A:”

Amended to specify that custodial parents must pay the costs of genetic testing if contesting original test results, as mandated by the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193)

Proposed 22 VAC 40-880-170

Code of Virginia cites referenced to provide the legal base for paternity establishment

“Section 4:”

Amended to specify that the Department is authorized to order a putative father to submit to genetic testing, as mandated by the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193)

Deleted outdated federal regulation stipulating time frames for paternity establishment

Proposed 22 VAC 40-880-190

“Section C:”

Deleted. Information included in the new Section C

“Section G:”

Proposed to indicate when not to establish an obligation

All sections re-lettered for clarification

Proposed 22 VAC 40-880-200

“Section A:”

Language modified to identify administrative obligations

Deleted language referring to contents of an order

“Section B:”

Amended to specify verification of financial informatio

“Section B-1:”

Amended to specify that *verified* financial statements shall be obtained from both *legally responsible parties* when calculating the child support obligations

“Section B-2:”

Amended to identify “legally responsible parents”

“ Section B-3:”

Amended to reflect name change of the program, and ~~that~~ financial information can be verified through the IV-A system

“Section B-4:”

Amended to include language that the department has the authority to request financial information pursuant to Code of Virginia § 63.1-274.5

“Section –B-5:”

Amended to indicate “noncustodial legal parents” are responsible to provide financial information

“Section B-6:”

Deleted as this information is incorporated into Section B-5.

“Section C:”

Deleted, as it did not comply with the Virginia Child Support Guidelines, Federal regulations, and the Code of Virginia.

“Section D:”

Re- lettered to be Section C

Proposed 22 VAC 40-880-210

Amended to comply with new federal mandates pursuant to Public Law 104-193. Minor technical changes made for consistency

Proposed 22 VAC 40-880-220

Clarified language regarding the medical support obligor's requirement to provide information to the department regarding the availability of, and/or changes in, health insurance for dependents

Proposed 22 VAC 40-880-230

“Section A:”

Amended to specify that the child support guideline is to be used when establishing obligations

“Sections B, C, D, and E:”

Deleted. Information is now included in 22 VAC 40-880-200 of this proposed regulation

“Section F:”

Amended to become proposed Section B

Proposed 22 VAC 40-880-240

Amended to reflect new Code of Virginia as cited in this section. Specifically, information is being added on factors to consider when establishing an obligation.

Proposed 22 VAC 40-880-250

Section amended to comport with new federal and state law as referenced in this section. Minor technical changes have also been made.

Proposed 22 VAC 40-880-260

“Section B:”

Revised to incorporate the forms *Immediate Withholding of Earnings* and the *Voluntary Assignment of Earnings* under one form, *Income Withholding Order*. The Federal Office of Child Support Enforcement has issued a standard form for all states to use for income withholdings. This form is to be used for all withholding types, immediate, mandatory, and voluntary.

“Section C:”

Additional enforcement remedies have been added, namely interest on arrears; the suspension of drivers, occupational, professional, recreational or sporting licenses; and data matches with financial institutions. The suspension of drivers, occupational, professional, recreational or sporting licenses and data matches with financial institutions are requirements of the Personal Responsibility Worker Opportunities Act of 1996 (PRWORA)

“Section E:”

Revised to reflect the change of absent parent to noncustodial parent

“Section F:”

Revised to reflect the change of absent parent to noncustodial parent

“Section I:”

Stipulates that the department may receive requests from other states to be included in any high-volume administrative enforcement actions that are taken to enforce support orders. Usage of high-volume administrative enforcement for interstate cases is a requirement of the Personal Responsibility Worker Opportunities Act of 1996 (PRWORA).

Proposed 22 VAC 40-880-270

“Section A:”

Revised to delete the reference to earnings and insert the term “income”, as monies other than earnings are subject to withholding

“Section B:”

Technical clarification

“Section C:”

Revised to include the additional methods of service for the income withholding order.

“Section D:”

Technical clarification

“Section E:”

Clarified that when a nonpublic assistance applicant requests case closure, the income withholding is released unless there is a debt owed to the Commonwealth

Technical clarification

Proposed 22 VAC 40-880-280

Revised to reflect the change of absent parent to noncustodial parent; the requirement for immediate withholding in child support orders unless the parties agree in writing or the department determines good cause.

Deleted reference to voluntary assignment of earnings as it is no longer applicable

Proposed 22 VAC 40-880-290

Renamed “Determining the amount to be applied toward past due support”

Added information regarding how to derive at the amount to collect to satisfy arrearages

Proposed 22 VAC 40-880-300

Renamed “Alternative Payment Arrangement”

Added information regarding the written alternative payment arrangement or the use of the *Assignment of Earnings* as an alternative payment arrangement

Proposed 22 VAC 40-880-320

Renamed “Initiated withholding of income”

Proposed 22 VAC 40-880-330

Revised to incorporate the PRWORA requirement that liens arise by operation of law for child support debts

Proposed 22 VAC 40-880-340

Language added to include Administrative Enforcement for Interstate Cases (AEI) as required by PRWORA.

Proposed 22 VAC-40-880-360

Revised to incorporate the withholding limits as set by the federal Consumer Credit Protection Act

Proposed 22 VAC 40-880-370

Code site change only

Proposed 22 VAC 40-880-380

“Section A:”

Amended to comply with new federally mandated distribution rules with minor technical changes made for clarity

“ Section A-3””

Added to indicate that state tax intercepts shall be distributed in the same manner as other payments received.

“Existing Section A-3:”

Proposed to be Section A-4

“Existing Section A-4:”

Proposed to become Section A-5

Proposed 22 VAC 40-880-385

Created because of mandates specified in the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193).

Proposed 22-40-880-410

Revised to reflect PRWORA requirements for collecting child support owed by federal employees, military personnel and public health services employees

Proposed 22 VAC 40-880-430

Changed references to the person who files an appeal to “appellant.” Noncustodial parents are no longer the only parties who may appeal certain notices

Proposed 22 VAC 40-880-440

Changed references to the person making an appeal to “appellant,” and to persons who may want to attend and have legal representation to “parties.”

Proposed 22 VAC 40-880-480

Technical changes

Proposed 22 VAC 40-880-490

Technical change to conform with Interstate case processing name change from URESA to UIFSA. Code section changes

Proposed 22 VAC 40-880-500

Amended because of mandates specified in the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193)

Proposed 22 VAC 40-880-510

Amended because of mandates specified in the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193)

Proposed 22 VAC 40-880-520

Amended because of mandates specified in the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193)

Proposed 22 VAC 40-880-550

Added a provision, as required by PRWORA, that when a protective order has been issued or the department otherwise finds reason to believe that a party is at risk of harm from the other party, information other than the name of the party at risk shall not be released

Proposed 22 VAC 40-880-560

Removed reference relating to release of health insurance information in non-public assistance cases

Proposed 22 VAC 40-880-650

Technical changes and term “AFDC” replaced with “TANF”

Proposed 22 VAC 40-880-670

Removed references in paragraphs B and D as these circumstances are now covered by paragraph A. Paragraph E is deleted as new state guidelines have been developed governing retention of case record material

Proposed 22 VAC 40-880-680

Technical changes

Proposed 22 VAC 40-880-700

“Section B:”

Added the condition that as mandated by the Personal Responsibility and Work Opportunity Reconciliation Act, the department shall require advance payment for subsequent genetic testing when the original results are contested

Proposed 22 VAC 40-880-715

This section on Service of Process, Seizure and Sale has been added to give the department the authority to pass on the cost for service of process as it relates to the seizure and sale of property as well as the seizure and sale cost

Proposed 22 VAC 40-880-720

Technical changes

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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.

These regulations are expected to impact the institution of family and family stability in the following ways:

These regulations are expected to impact the institution of family and family stability in the following ways:

- 1.) These regulations strengthen the authority and rights of parents in the education, nurturing and supervision of their children. DCSE provides location of noncustodial parents, establishment of paternity, establishment of support obligations, and the enforcement techniques necessary to collect child support. Child support enforcement is a vital component of the Governor's resolve to strengthen Virginia's families. It has been proven that early paternity establishment fosters the relationship between the child and father. Paternity establishment also contributes to the cohesiveness of the family unit. Studies also suggest that providing child support consistently is conducive to an ongoing relationship between the child and both parents.
- 2.) These regulations encourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself and one's children by providing the financial support necessary to care for the child or children of the relationship. Statistics show that receiving child support is a key component to the success of Welfare Reform. DCSE provides a vital service for the continued improvement of the self-esteem of today's youth. Research has shown that regular child support is linked to more years of school attendance, increases in grade point averages, and reductions in behavior problems -which may be due in part to the child feeling that Dad cares.
- 3.) These regulations are not expected to impact, via strengthening or eroding, the marital commitment.
- 4.) **These regulations increase disposable family income. The regulations herein provide the DCSE program with the necessary tools to provide a family not only money that is vital to a custodian raising children in single parent homes, but also encourages a relationship between noncustodial parents and their children.**