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Periodic Review Report of Findings

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-680
Regulation title	Virginia Energy Assistance Program – Low Income Home Energy Assistance Program (LIHEAP)
Date this document prepared	July 17, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

Please define all acronyms used in this Report. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

APA - Administrative Procedure Act
DSS – Department of Social Services
EAP – Energy Assistance Program
LIHEAP – Low-Income Home Energy Assistance Program

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

Section 63.2-217 of the Code of Virginia grants authority to the State Board of Social Services to promulgate rules and regulations to operate assistance programs in Virginia. The EAP administered by the DSS was established in accordance with the federal Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35) as amended through August 1999. The LIHEAP statute was amended in 2005 by the Energy Policy Act (Public Law 109-58).

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

Two alternatives were considered: (i) to not apply for federal LIHEAP funding/not operate the EAP thereby, eliminating the need for a regulation or (ii) to not promulgate a regulation for the EAP and operate the program based on federal statute. Both of these alternatives while considered were rejected for the reasons provided.

Currently, the Commonwealth receives approximately \$91 million annually in federal LIHEAP funding to offer and administer the EAP. Unlike other federally funded programs, there is no state match required to receive LIHEAP funding. To not apply for and accept federal LIHEAP funding would cause the Commonwealth to forego substantial revenue and would be extremely detrimental to low-income households who depend on this assistance to meet their winter heating and summer cooling needs. While there are other entities that offer energy assistance programs, no program is as comprehensive and robust as the EAP.

The federal LIHEAP statute does not require grantees to promulgate state regulations to receive and administer LIHEAP funding. However, the Code of Virginia (Section 63.2-505) requires the State Board of Social Services to promulgate regulations governing the amount of public assistance individuals receive. By definition at Section 63.2-100 EAP is defined as a public assistance program. Having regulations promulgated through the APA is particularly important on issues related to eligibility criteria and the determination of benefit levels both of which are routinely challenged through the appeals process and court proceedings. Given current EAP regulations are limited and only address eligibility criteria, benefit levels, application periods and administrative costs for local departments of social services, it is in the public interest to retain regulations governing the administration of the EAP.

Public Comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

The regulation was published for public comment on June 10, 2019; the comment period expired July 1, 2019. No comments were received.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The existing regulation meets the criteria set forth in Executive Order 14. It is necessary for the protection of public health, safety, and welfare for the citizens of the Commonwealth who are eligible for energy assistance through the receipt of EAP benefits. The regulation is clear and concise and written in a manner easily understood.

Decision

Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The regulation should stay in effect without change to ensure the public is aware of the processes, procedures, and eligibility criteria for each of the EAP components. There have been no changes to the federal laws or regulations on which the provisions are based.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

Because this regulation makes revenue available to over 500 vendors, the impact of the regulation on small business is positive. The regulation provides eligible EAP vendors, which includes vendors from the small business community, access to revenue made available through the federally funded LIHEAP. The regulation is not complex and does not overlap, duplicate or conflict with other federal or state laws or regulations. The last evaluation of this regulation occurred in 2015. Business entities that provide EAP goods and services are eligible to participate as vendors in the EAP. Payments to vendors are determined by their respective products, self-designated service areas and by customer selection. There is no need to amend or repeal the regulation to minimize the economic impact on small businesses.