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Periodic Review Report of Findings

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| Agency name | State Board of Social Services |
| Virginia Administrative Code (VAC) citation | 22VAC40-685 |
| Regulation title | Virginia Energy Assistance Program – Home Energy Assistance Program |
| Date this document prepared | April 17, 2020 |

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.

DSS - Department of Social Services
EAP - Energy Assistance Program
HEAP - Home 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 public assistance programs in Virginia. The HEAP administered by was established in accordance with section § 63.2-805.

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.

Because the language of section § 63.2-805 pertaining to HEAP is detailed and prescriptive, one alternative is to not promulgate a regulation for HEAP and operate the program based on state statute. This alternative is not feasible, as subsection E of § 63.2-805 makes clear that the receipt of monies into the fund and disbursement of monies from the fund will be directed by State Board regulations. Therefore, regulations specific to HEAP fund disbursements are required. To provide a context for the operation and administration of the HEAP for which funds are disbursed, the regulation includes a definitions section, a program section, and a HEAP fund section. These three sections make clear the purpose of the HEAP and the process and method to disburse funds. It is in the public interest to retain regulations governing the administration of the HEAP in conjunction with the required regulations regarding disbursement of HEAP funds.

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 December 9, 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. HEAP provides funding to augment the Low-Income Home Energy Assistance Program, which provides critical heating, cooling, and crisis assistance that ensures the safety, health, and welfare of Virginia’s low-income citizens. 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 agency recommends that the regulation retained without change to ensure the agency remains in compliance with § 63.2-805 and that the public is aware of the procedures regarding program administration and fund disbursement for the HEAP.

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.

The regulation grants authority to DSS to receive and disburse HEAP funds. These funds are used to supplement the LIHEAP federal funding, which is used to offer and administer the EAP. In addition, HEAP funds may be used to leverage additional federal funds. The Department did not receive any complaints or comments on the regulation.

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.