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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC40-325
Regulation title	Fraud Reduction/Elimination Effort
Action title	Redefine criteria for reimbursement
Document preparation date	August 20, 2003

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).

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

Pursuant to §63.2-526D of the *Code of Virginia*, the Fraud Reduction/Elimination Effort Program, a statewide public assistance fraud prevention and investigation program, is funded from (i) general funds appropriated for fraud control activities, (ii) any federal funds available for this purpose, and (iii) balances in the Fraud Recovery Special Fund (Fund). The Fund is composed of overpayment moneys recovered by local departments of social services related to Temporary Assistance to Needy Families (TANF) and Food Stamp programs and other federal benefit programs administered by the Department net of any refunds due the federal government. Funds from the aforementioned three sources reimburse local departments of social services' direct program costs. With state general funds unappropriated for this program after the first year of program operation, the program was funded at the rate of 50% by available federal TANF and Food Stamp Program administrative funds and at the rate of 50% by the balances in the Fund. Given the limited financial ability of present and past public assistance customers who must make financial restitution, and the limited staffing resources of local departments of social services to aggressively pursue overpayment recoveries, the Fund balances are not sufficient to

match the federal share of funding. The program is therefore unable to support itself under the current funding methodology. The primary goal of the amended regulation is to redefine the criteria for fully reimbursing local departments for program costs by removing the requirement that provides reimbursement only when the local department of social services recovers overpayments that meet or exceeds the local share of direct program costs.

Other amendments to the regulation will include fraud detection as a function of the program, expansion of the Definition section, and a redefining of the local department of social services responsibility to recover overpayments.

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.

The legal basis for this regulation is §§ 63.2-217 and 63.2-526 of the Code of Virginia. The regulation does not exceed the scope of what the *Code* allows. Regulations for this program are mandatory.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

The redefinition of the criteria for full reimbursement for local program costs is needed to ensure the continuation of the statewide fraud program. Also, revisions of the Fraud Reduction/Elimination Effort Program are made to include the responsibility of fraud detection, an integral component of fraud prevention and investigation. Additionally, the definitions section of the regulation will be expanded for clarity. Maintaining the statewide Fraud Reduction/Elimination Effort Program enhances program integrity, and promotes the recovery of program overpayments due to the occurrence of fraud; thus contributing to the welfare of citizens.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

A critical element of maintaining the Fraud Reduction/Elimination Effort Program is funding. The level of recovery of Temporary Assistance to Needy Families (TANF) and Food Stamp

overpayments, a major component of the fraud program funding stream, is not sufficient to support the program. Consideration is being given to reduce dependency on TANF and Food Stamp overpayment recoveries by expanding the level of effort in Child Care Program fraud investigations, which would be funded by Child Care Program administrative funds. Inclusion of Child Care Program administrative funds would reduce dependency on TANF and Food Stamp benefit overpayment recoveries.

Impact on family

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

This regulatory action will have a positive effect on the institution of the family and family stability. Public assistance fraud prevention, detection and investigations as well as overpayment recoveries resulting from such activity will help ensure that sufficient assistance benefits will be available for those citizens legitimately in need.

Periodic review

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section. If this NOIRA is the result of a periodic review, please (1) summarize all public comment received in response to the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 21, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Commenter	Comment	Agency response
Robert A. Cox III	To ensure maximizing statewide collection effort, recommend funding fraud program through state general funds, and establish a collections program funded through recovery of overpayments.	General funds are currently limited. Suggestions will be considered when revising the regulation.

The Department of Social Services, through examination of the regulation, determined that the regulation meets the criteria set out in Executive Order 21, and is clearly written and easily understandable.