



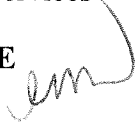
# COMMONWEALTH of VIRGINIA

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**TO:** MARGARET SCHULTZE, Commissioner  
Virginia Department of Social Services

**FROM:** ELLEN FULMER MALENKE  
Assistant Attorney General 

**DATE:** March 2, 2017

**SUBJECT:** Final Regulation – Section 22VAC40-325-20 (Fraud Reduction/Elimination Effort)

I am in receipt of the attached final regulation regarding the Fraud reduction/elimination effort program. You have asked the Office of the Attorney General to review and determine if the State Board of the Virginia Department of Social Services has the statutory authority to promulgate the proposed regulation and if the proposed regulation comports with applicable state and federal law.

This regulation is adding language and modifying some of the existing language to this Section - 22 VAC 40-325-20 - to include methodology related to reimbursements local DSS agencies can receive for conducting fraud prevention, detection and investigation activities consistent with requirements of federal regulations, the Code of Virginia and the regulation itself.

It is my opinion that the State Board of DSS has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act (“APA”) and has not exceeded that authority.

It is my view that this regulation is not exempt from but is subject to the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(a). If you have any questions or need additional information about these regulations, please contact me at 786-4856.

cc: Kim F. Piner, Esquire  
Attachment

**Project 4195 - Final**

**DEPARTMENT OF SOCIAL SERVICES**

**Amend Regulation to Accurately Reflect Reimbursement Practices for Local Fraud  
Activities**

**22VAC40-325-20. The Fraud Reduction/Elimination Effort.**

A. In compliance with § 63.2-526 of the Code of Virginia, the department shall establish a statewide fraud prevention, detection, and investigation program to be named the Fraud Reduction/Elimination Effort (FREE).

1. The department shall develop and implement policies and procedures for the FREE program.

2. The department shall provide a detailed local reimbursement procedure, on an annual basis, to assist in the formulation of the local department's FREE program operation plan. The department's procedure shall project the available funding and the number of local fraud investigators for each local department that the FREE program will support. The number of investigators shall be based on an evaluation of the available funding and appropriate criteria from one or more of the following: a local department's average TANF and Food Stamp caseload size, average number of monthly applications for food stamps and TANF, number of local department workers, geographic location, number of fraud investigations, program compliance, collections, and performance expectations.

3. The department shall develop, implement, and monitor local FREE units performance expectations.

B. Each local department shall aggressively pursue fraud prevention, detection, and investigations.

1. Each local department shall conduct fraud prevention, detection, and investigation activities consistent with the requirements of federal regulations, the Code of Virginia, ~~the regulations contained herein~~ this chapter, and the department's FREE program policy.

2. Each local department shall submit to the department, for annual approval, a program operation plan, formatted by the department, which shall include a description of the local department's prevention, detection, and investigative process; an agreement with the Commonwealth's attorney; identification of staff charged with oversight or supervisory responsibility of the FREE program; a performance expectation monitoring process; a signed commitment to adhere to specified responsibilities identified in the Statement of Assurance section of the program operation plan; and, if requested, a proposed annual budget to include the identification of the FREE program investigators, their salary, fringe benefit amounts, supporting operating costs, hours worked per week, and time dedicated to the FREE program.

3. Upon request, each local department shall provide the department with an accounting of FREE program expenditures.

C. Funding for the FREE program shall be comprised of balances in the Fraud Recovery Special Fund, general funds appropriated for this activity, and any federal funds available for this purpose.

1. In order to receive reimbursement of direct costs and supporting costs of operation, a local department must:

a. Comply with all pertinent law, regulation, and policy;

b. In accordance with the law, each local department shall establish and maintain a FREE prevention, detection, and investigation unit; and

c. Recover fraud-related and nonfraud-related overpayments of designated federal assistance programs. ~~Reimbursement~~ An allocation to localities shall be made in accordance with the following methodology for the allocation of funds to localities as developed by the work group convened by the commissioner, consisting of local department representatives and senior department managers: 40% based on each agency's Temporary Assistance for Needy Families, food stamp, energy assistance, and child care caseload; 20% based on the number of investigations completed; 20% based on the number of established claims; and 20% based on the actual collections from established claims. Each local department's ~~level of reimbursement of direct and support operation costs is paid from available federal funds, general funds and state retained portion of collections~~ department is reimbursed for fraud-related expenses through funds appropriated for local social services staff and operations.

2. Local departments may contract with other local departments to share a fraud prevention, detection, and investigation unit and may contract with private entities to perform fraud investigations. Any private entity performing fraud investigations shall comply with the requirements of § 30-138 of the Code of Virginia and the restrictions of § 63.2-526 of the Code of Virginia.

