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Fast-Track Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC40-880
VAC Chapter title(s)	Child Support Enforcement Program
Action title	Implementation of Periodic Review Recommendation
Date this document prepared	March 31, 2022

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This change amends the Child Support Enforcement Program regulation based on a periodic review conducted prior to the pandemic.

The Child Support Enforcement Program regulation furthers the Department's mission of people helping people triumph over poverty, abuse and neglect to shape strong futures for themselves, their families and communities by promoting the efficient and accurate collection, accounting and receipt of support for financially dependent children and their custodial parents, and by furthering the effective and timely enforcement of such support.

This action makes technical corrections and updates to the regulation. After periodic review of the Child Support Enforcement Program regulation, at its June 19, 2019 meeting, the Board adopted the Periodic Review Report of Findings (TH-07). This action implements the Decision noted in the TH-07, which states:

The agency recommends amending the regulation to enhance consistency with the Code of Virginia and applicable federal law. In addition, the Board may make simple amendments where necessary to the existing regulation for the purpose of clarity and reformatting of information to conform to the requirements of the *Form, Style, and Procedure Manual for Publication of Virginia Regulations*. The intent is to submit a Fast Track to start the process to make the suggested amendments.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

None.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The Board believes that the changes will be noncontroversial as they improve consistency with federal and state law.

Legal Basis

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

The Board is the promulgating entity. Section 63.2-217 of the Code of Virginia states that the Board shall adopt regulations, not in conflict with Title 63.2, as may be necessary or desirable to carry out the purpose of the title, which includes child support enforcement under Chapter 19. In addition,

§§ 63.2-1914, 63.2-1918, and 63.2-1946 of the Code of Virginia provide the Board with authority to adopt regulations related to specific aspects of the child support enforcement program.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

This regulatory change is needed to implement periodic review recommendations.

The change is essential to the welfare of citizens: clear regulations help parents, courts, and the Department of Social Services participate in the child support process. Clear regulations also support participants in understanding their rights and responsibilities.

The goal of the change is to make technical and clarifying amendments to the provisions of the Child Support Enforcement Program regulation.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

There are no new provisions. The following items are substantive changes to existing sections:

- Removing an obsolete threshold for when parents can request review of their child support obligations
- Clarifying the determination of the amount paid toward arrears when the noncustodial parent is participating in the department's family-centered services.
- Adding the timeframe for appeals of federal passport denial notices
- Modernizing definitions to be consistent with technological and legal changes

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary 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, include a specific statement to that effect.

The Board is unaware of any disadvantages to the public or the Commonwealth. The changes will improve the effectiveness of the child support enforcement program, which is a benefit both to the public and the Commonwealth. Improved definitions and an expanded description of services provided will improve the agency's service delivery.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

The Board has identified no regulatory changes that are more restrictive than the applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No agency is particularly affected. The regulation has a statewide impact.

Localities Particularly Affected

No locality is particularly affected. The regulation has a statewide impact.

Other Entities Particularly Affected

No other entity is particularly affected. The regulation has a statewide impact.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	Because the changes are technical or clarifying, there are no costs beyond this update.
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<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	N/A
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The change will add clarity for participants who deliver and receive child support services. The change in the definition of the term “Application” in Section 10 may facilitate the department in integrating child support systems with existing social service systems.

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	N/A
Benefits the regulatory change is designed to produce.	N/A

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Custodial parents, noncustodial parents, and third-party case participants will benefit from the improved clarity of the regulation. However, they will not encounter a direct economic impact.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	N/A
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	N/A
Benefits the regulatory change is designed to produce.	Custodial parents, noncustodial parents, and third-party case participants will benefit from the improved clarity of the regulation.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

The agency considered making changes to its internal staff manual instead of making regulatory changes. As an example, the agency considered altering the staff manual's description of services provided. However, the regulation already states which services are to be provided, and the agency decided to expand the public definition. Updating the regulation provides the public with greater transparency.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

None of the items in 1) through 5) apply to the regulatory change. The change does not impose new or more stringent compliance or reporting requirements, except perhaps in Section 430 which adds a deadline for appeals of federal income tax return offsets. This deadline, however, already exists and is in line with federal law.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Department of Social Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Jennifer Krajewski, Division of Child Support Enforcement, 801 East Main Street, 12th Floor, Richmond, VA 23219, 804-726-7474 (phone), 804-726-7476 (fax). jennifer.krajewski@dss.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
10		"Application" is defined. "Good cause" is defined.	The definition of "application" has been expanded to clarify that it includes electronic requests in a form that the department provides and to allow for signature by electronic means. This modification is necessary to bring the regulation in line with updated technologies. The definition of "good cause" has been modified to pertain to any applicant or recipient of public assistance, not limited to TANF.
90		After establishing a case record the department shall verify case information.	The language has been changed to correct a grammatical error.
240		When a parent is found to be voluntarily unemployed or fails to provide financial information, if actual income is not available, use the federal minimum wage.	The language has been updated to allow using zero as a parent's income when evidence of actual income or other ability to pay is unavailable. This regulation requires an update to bring it in line with updated practices.
250		A parent may request an early review by showing a need to add a provision ordering the parents to share the costs of all unreimbursed medical/dental expenses	The language has been changed to remove the \$250 threshold, which no longer applies.

		exceeding \$250 per child per year.	
290		If an order does not specify an amount to be paid toward past due support, the department shall determine the amount.	The language was updated by providing that when a noncustodial parent participates in one or more of the department's family-centered services or has a payment agreement; the payment toward past due support may be set at a lesser amount, but never lower than the court order. Federal and state law permit flexibility when the Department and the parent enter into a payment agreement.
320		The department shall initiate an income withholding order to the noncustodial parent's employer when either parent requests withholding.	The regulation was updated to require income withholding when the support order includes a provision for immediate income withholding. The section needs to be updated to conform with the language in § 63.2-1923 of the Code of Virginia.
350		The director of the division or his designee shall give final approval for the use of distraint, seizure and sale.	The language has been changed to remove the word "his" to make the regulation gender neutral.
430		The department shall determine the validity of an administrative appeal.	The language has been updated to change "must" to "shall" for consistency. Language has been added to clarify the appeal timeframes for federal passport denials.
480		When parents reside in different state, cooperation between state agencies may be necessary.	The language has been updated to change "must" to "shall" for consistency. The language has been updated to remove the requirement of two-state solutions in cases when a parent lives in another state. This clarifies the Department's authority to pursue direct enforcement. Direct enforcement refers to when the Department sends an <i>Income Withholding Order</i> directly to a parent's employer in another state. Direct enforcement is often faster in obtaining support for the custodial parent and child living in Virginia, and these orders are routine for employers. The language has also been update to correct a citation to the Code of Virginia.

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage