



townhall.virginia.gov

Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22 VAC40-325
VAC Chapter title(s)	Fraud Reduction/Elimination Effort
Action title	Rename Program and Modify Reimbursement Formula
Date this document prepared	June 18 ,2025

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 regulatory change will rename the Fraud Reduction/Elimination Effort to the Statewide Fraud Control Program. It will also change the methodology used to reimburse local departments of social services. The current formula for reimbursement to local departments of social services for fraud control activities provides more weight to the size of a locality's caseloads for programs and less weight to actual fraud control activities taken or completed. This results in uneven reimbursement rates when compared to performance of desired outcomes, such as investigations initiated, claims established, or other similar actions. This regulatory action will move away from a formula that is caseload based, to one that reflects actual fraud work. An allocation to localities shall be made in accordance with the following methodology: 33% based on investigations completed; 33% based on the number of established claims; and 34% based on the actual collections from established claims. Currently the allocation is based on 40% of caseload, 20% on number of investigations completed, 20% on established claims and 20% on collections from claims.

Other changes include striking unnecessary definitions and clarifying existing definitions. Information is being added to address current practices used by the agency to allocate reimbursements to LDSS for transparency. Existing language is given more specificity in some cases to increase clarity.

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.

Fraud Reduction/Elimination Effort – FREE
LDSS – local departments of social services
SNAP – Supplemental Nutrition Assistance Program
TANF – Temporary Assistance for Needy Families

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 the ORM procedures, "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."

The mandate for this regulatory change is a State Board of Social Services decision. Code § 63.2-217 authorizes the Board to adopt regulations necessary to carry out Title 63.2. Code § 63.2-526 authorizes the Board to adopt regulations to implement a statewide fraud control program.

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.

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. Section 63.2-526 of the Code of Virginia requires the State Board of Social Services to adopt regulations to implement a Statewide Fraud Control 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 is intended to solve.

This regulation is essential to protecting the welfare of citizens, as fraud control activities ensure that assistance programs are implemented with integrity and equal access to benefits. Casual observation of the amounts for reimbursement for local departments of social services for fraud control activities shows that the larger localities, based on caseload sizes for programs, such as SNAP or TANF, routinely receive

sizable reimbursement amounts even though these departments may have minimal fraud control activities. In contrast, local departments with smaller program caseloads often outperform larger departments in completing fraud control activities. This regulatory action will update the formula for reimbursement to one that is based more on performance of fraud activities.

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.

- Renames the fraud control efforts to the Statewide Fraud Control Program and eliminates all references to the Fraud Reduction/Elimination Effort.
- Eliminates the acronym FREE where it refers to fraud control efforts.
- Updates the formula for reimbursement to one that is based on performance of fraud activities. An allocation to localities shall be made in accordance with the following methodology: 33% based on investigations completed; 33% based on the number of established claims; and 34% based on the actual collections from established claims. Currently the allocation is based on 40% of caseload, 20% on number of investigations completed, 20% on established claims and 20% on collections from claims.
- Adds current agency practice for making allocations to LDSS for increased transparency.

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.

There are no disadvantages and/or issues associated with the change to the public, the agency or the Commonwealth.

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.

There are no applicable federal requirements, or requirements exceeding applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as

tribal governments, school boards, community services boards, and similar regional organizations. "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.

Some local departments of social services may be affected by the regulatory change. With caseload currently the heaviest weighted percentage (40%), many of the larger localities, based on caseload sizes for programs such as SNAP or TANF routinely receive sizable reimbursement amounts, even though these departments may have only minimal or no fraud program activities. In contrast, local departments of social services with smaller program caseloads often outperform larger departments for completing fraud program activities. It is anticipated some larger agencies will receive a smaller amount of allocation monies and some smaller agencies will receive a higher amount of the allocation monies.

Localities Particularly Affected

The agency is unable to determine which local departments would be most affected until the new formula goes into effect. Currently, allocations include 40% of the local department caseload. With some local departments not participating in fraud activities and only receiving an allocation due to their caseload, they will be affected, as they will not receive any monies. Localities that do a lot of fraud activities but have a smaller caseload will receive their allocation based on the work completed.

Other Entities Particularly Affected

None we are aware of

Economic Impact

Consistent with § 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 the proposed change versus the status quo.

Impact on State Agencies

For your agency: 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.	The proposed change only addresses the method of allocation. It is designed to allocate the same funding to localities based on performance levels and not caseload size. This change will result in an improved utilization of the same fund. This change has no impact in costs or savings, but is a more efficient and effective way to fully use the funds.
For other state agencies: projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	No change for other state agencies.
For all agencies: Benefits the regulatory change is designed to produce.	The new methodology allows more funding to be directed to those localities actively demonstrating activities surrounding fraud detection, prevention

	and investigations, to include establishing claims and collections of said claims. The old process gave more weight to caseload which is not an indicator of fraud control practices by local departments.
--	--

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees, or revenues resulting from the regulatory change.	See ORM form table 2
Benefits the regulatory change is designed to produce.	

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

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.	See ORM table 4
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.	Unknown at this time
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.	None
Benefits the regulatory change is designed to produce.	Allocations going to agencies doing fraud work vs. agencies who received allocations due to size of case load

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.

Code § 63.2-526 directs the agency to adopt regulations to implement a statewide fraud control program. Regulatory action to amend 22VAC40-325 is necessary to implement the changes to the program and provide transparency to the local departments.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B 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.

Please see above.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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 applicable law, will minimize the economic impact of regulations on small businesses.

The proposed regulatory changes meet the criteria set out in EO19 and ORM procedures. The regulation provides the framework for implementing the program and is still needed. No complaints have been

received. The current regulation is clearly written and does not overlap, duplicate or conflict with other laws. The last periodic review was included in a 2021 NOIRA, published in March 2021. The NOIRA was withdrawn in April 2023.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency's response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response

No public comment received.

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.

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, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of 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 [Susan Lloyd, Fraud Management, Compliance; 5600 Cox Road, Glen Allen 23060; 804.682.1207; susan.lloyd@dss.virginia.gov and email address]. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

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 the existing VAC Chapter(s) and the proposed regulation. If the 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	Explain the change(s), intent, rationale, and likely impact of new requirements
10	n/a	Definitions.	Rename the program to Statewide Fraud Control Program to align with § 63.2-526 of the Code of Virginia and vision of the agency. Clarify existing definitions by adding references to Supplemental Nutrition Assistance Program, SNAP, and Temporary Assistance for Needy Families. This will increase understanding for the public. Repeal definitions for: Direct costs; Fraud Recovery Special Fund; General fund; State retained portion of collections; and Supporting costs of operation. These definitions are repealed because they are not used in the proposed regulation.
20		Section refers to the Fraud Reduction Elimination Effort (FREE) 20.A. cites the Code of Virginia mandate for the department to establish a statewide fraud prevention, detection and investigation program. 20.A.2. The department must provide a detailed local reimbursement procedure on an annual basis, to assist LDSS in formulating their program operation plan. The department's procedure must project available funding and number of local fraud investigators the program will support. Criteria is provided. The department must develop, implement and monitor LDSS FREE performance expectations.	Throughout the section, references to FREE are removed. References to Statewide Fraud Control Program and Fraud Program are added. Language is removed. A.1 is now A. 20.A. is removed because it repeats statute. Much of the current language in section 20 is retained but reorganized and moved to new subsections and subdivisions within section 20. 20.A.2 is stricken, and moved to new 20.D, E, and F. A date by when LDSS must submit an annual program operation plan to the department is added, February 28. The LDSS operation plan shall be in a format provided by the department, which is already current practice. The LDSS annual operation plan maintains the requirement for an

		20.B. directs LDSS to aggressively pursue fraud prevention, detection, and identification activities. Each LDSS must submit to the department for annual approval a program operation plan, formatted by the department. Required information is specified. Upon request, each LDSS shall provide the department an accounting of FREE expenditures. 20.C. Funding for FREE is comprised of balances in the Fraud Recover Special Fund, general funds, and any available federal funds. To receive reimbursement for direct costs and support costs of operation, the LDSS must comply with all pertinent law, regulation and policy, establish and maintain a FREE prevention, detection, and investigation unit and recover fraud-related and non-fraud related over payments of designated federal programs. An allocation to localities is made as follows: 40% based on TANF, food stamp, energy assistance and child care caseload; 20% on number of established claims; 20% on number of completed investigations, 20% on number of established claims, and 20% on actual collections. LDSS can contract with other local LDSS to share a fraud program or with private entities. Any private entity must comply with requirements of § 30-138 and §§ 63.2-526 of the Code of Virginia.	agreement with the Commonwealth's attorney, but clarifies the agreement is for prosecution of individuals referred by the LDSS Fraud Program Unit. A new subsection E. is added. Parts of new subsection E reflect language in the current regulations that has been moved to the new subsection for clarity. New 20.E.2. changes how funds are appropriated for LDDD Fraud Program reimbursements, as follows: 33% based on number of completed investigations; 34% based on established claims; and 33% based on actual collections. This change in methodology will result in LDSS being reimbursed for actual performance of fraud prevention, detection and investigation activities, rather than caseloads. See examples at the end of this column. New 20.G. includes current language about LDSS contracting with other LDSS and private entities. It clarifies that any private entity providing fraud investigations must do so pursuant to a contract with a LDSS. Clarification is added that the LDSS is responsible for ensuring any contracting private entity complies with all applicable federal and state laws, regulations, and policies. It has always been assumed LDSS contracted with private entities for fraud investigations, but it is being made explicit in the proposed regulation. Likewise, specific language is added to ensure LDSS are responsible for ensuring private entities adhere to laws and regulations. Examples implementing the new methodology set out 20.E.2: Example A. Agency X completed 200 investigations → $200 \div 10,000$ (completed statewide) = 2%. The 2% is what that agency will receive of the 33% total budget.
--	--	--	---

			Example B. Agency X had \$150,000 in collections of overpayments → $\\$150,000 \div \\$5,000,000$ (monies collected statewide) = 3%. The 3% is what that agency will receive of the 34% of the total budget.
			Example C. Agency X has established 500 claims → $500 \div 15,000$ (statewide) = 3%. The 3% is what that agency will receive of the total budget.

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 to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, 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