



Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC40-295
Regulation title	Temporary Assistance for Needy Families
Action title	Exclusion Periods for Intentional Program Violations
Date this document prepared	December 10, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

Currently, 22VAC40-295-140 provides that an individual found to have committed an Intentional Program Violation (IPV) (i) by a court of appropriate jurisdiction; (ii) pursuant to an administrative disqualification hearing; or (iii) by waiving his right to an administrative disqualification hearing is in eligible to participate in TANF for a specified time period. The IPV exclusion time periods are currently: 1) six months for the first offense; 2) 12 months for the second offense; and 3) permanently for the third offense. The exclusion periods are being modified to align with time exclusions in SNAP: 1) 12 months for first offense, 2) 24 months for the second offense, and 3) permanently for the third offense.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

ADH – Administrative Disqualification Hearing.

SNAP – Supplemental Nutrition Assistance Program.

TANF – Temporary Assistance for Needy Families.

IPV – Intentional Program Violation

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

Pursuant to § 63.2-217 of the Code of Virginia, the State Board of Social Services has authority to promulgate rules and regulations necessary for operation of all assistance programs.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The purpose of the proposed action is to amend the regulation by aligning the exclusion time periods for IPV in TANF to coincide with those in SNAP. This regulation is needed to ensure that there are sufficient penalties in place to discourage individuals from committing an IPV. Safety net programs such as TANF help to protect the safety, health and welfare of eligible citizens. Imposing stricter penalties on individuals that violate program rules will discourage such violations and ensure that resources are available to meet the safety, health and welfare needs of all Virginians. .

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)

The current exclusion time period for an IPV is six months for the first offense and 12 months for the second offense. The proposed change is to extend this to 12 months for the first offense and 24 months for the second offense, to ensure exclusion periods are aligned in both the SNAP and TANF programs.

Issues

Please identify the issues associated with the proposed regulatory action, 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

For the general public and the Commonwealth, the action will foster program consistency by making the IPV penalties the same for TANF as those in SNAP, both being public assistance programs administered statewide by local departments of social services. More stringent penalties will serve as an incentive to discourage citizens from committing an IPV. The primary advantage to the Commonwealth is that the programs will be aligned and it will be easier to administer. This action will be instrumental in protecting the welfare of citizens in the Commonwealth, as it promotes consistency among programs and provides an additional tool to ensure that funding is spent appropriately on eligible families.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

This request to align IPV exclusion periods in TANF with those in SNAP does not exceed any federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities in the Commonwealth that have a disproportionate impact from this regulation. The regulation will simplify local administration of the programs by having exclusion periods that are aligned.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail to Bridget Shelmet, 801 E. Main Street, Richmond, Virginia 23219 or by email to bridget.shelmet@dss.virginia.gov or by fax to (804) 726-7144. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

<p>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board</p>	<p>This regulation will impact recipients of TANF. Businesses could potentially be impacted as a longer exclusion period will extend the length of time when an individual will not have TANF benefits to spend.</p>
<p>Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.</p>	<p>Approximately 59,800 individuals receive TANF each month. During Fiscal Year 2013, 166 went through the ADH process, with 32 resulting in convictions.</p>
<p>Benefits expected as a result of this regulatory proposal.</p>	<p>This regulation will provide a deterrent to misusing tax-payer funded public benefits. There will be a cost savings to the Commonwealth due to longer penalties. For purposes of this estimate, it is assumed that the number of convictions for an IPV will remain at 32. There is no data on whether these individuals were subject to a penalty for a first, second, or third IPV offense. Assuming that 75%, or 24 out of 32 persons determined to have committed an IPV, are for a first offense and 25%, or eight out of 32, are for a second offense, the period of ineligibility will increase by six months for 24 cases and by 12 months for eight cases. At an average monthly cost of \$123.69 per individual, the amount saved in annual benefit costs will be \$29,760.</p>
<p>Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.</p>	<p>There will be no costs to the state associated with this change.</p>
<p>Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.</p>	<p>There will be no costs associated with this change. Eligibility workers are already imposing penalties so the level of administrative activities will not change.</p>
<p>All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities</u>. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.</p>	<p>There is an estimated annual loss of \$29,760 in TANF benefits to individuals. Businesses could potentially be impacted, as a longer exclusion period will extend the length of time when an individual will not have TANF benefits to spend. However, since the loss of TANF benefits is only estimated to be \$29,760 annually on a statewide basis, the impact on business is expected to be minimal.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

This particular regulation change is an effort to bring the TANF and SNAP programs in alignment with one another, and can only be accomplished by regulation. This alignment will actually ease the administrative burden for local departments.

Regulatory flexibility analysis

Pursuant to §2.2-4007.1B of the Code of Virginia, please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

The proposed regulation was drafted to be the least burdensome on the citizens of the Commonwealth. The burden for properly following TANF eligibility rules and accurately reporting information rests with the recipient. The general public does not have any responsibilities with this regulation nor do private businesses.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Vicki Yeroian, MSW	Believes that increases Intentional Program Violation (IPV) time periods is too extreme. Reasons cited include that first time offenders do not always purposefully break the rules, TANF payments do not cover realistic family expenses, and it is the children in families that ultimately suffer.	The agency does not agree that the penalties are extreme. These penalties only apply for incidents in which a person intentionally provides misinformation or deceives the Department in order to obtain more benefits than eligible for. This penalty does not apply to unintentional mistakes that may result in payment errors.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed program regulation will encourage self-sufficiency, self-pride and the assumption of responsibility for oneself as the increased IPV exclusion time periods would be lengthier and discourage one from committing such program violations.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
140		In Section H, an individual found to have committed an IPV (i) by a court of appropriate jurisdiction; (ii) pursuant to an administrative disqualification hearing; or (iii) by waiving his right to an administrative disqualification hearing shall be ineligible to participate in the TANF program as follows: six months for the first offense, 12 months for the second, and permanently for the third offense.	This will be changed to make the exclusion period the same as it is in SNAP: 1) 12 months for first offense, 2) 24 months for the second offense, and 3) permanently for the third offense.