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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Department of Behavioral Health and Developmental Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	<u>12 VAC 35-240</u>
<b>Regulation title(s)</b>	Victims of Eugenics Sterilization Compensation Program
<b>Action title</b>	Make these emergency regulations permanent via fast track and make clarifying, noncontroversial amendments to the regulations currently in effect
<b>Date this document prepared</b>	August 30, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The 2015 Virginia General Assembly enacted the Commonwealth's Compensation for Victims of the 1924 Eugenical Sterilization Program on March 26, 2015, in Chapter 665 of the Acts of Assembly (the Budget Bill), giving DBHDS the authority to pay claims and establishing requirements for the compensation program. The language required that DBHDS establish emergency regulations to implement the provisions before any applications for claims can be accepted and processed.

The Board adopted emergency regulations on August, 14, 2015. This fast track action will make the regulations permanent, while also making clarifying edits regarding the type of documentation required for proof of identity.

## 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.*

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"Act" means Chapter 394 of the 1924 *Acts of Assembly* passed by the Virginia General Assembly on March 20, 1924, known as the Virginia Eugenical Sterilization Act, which provided for the sexual sterilization of individuals admitted to state institutions in certain cases.

"Board" means the State Board of Behavioral Health and Developmental Services.

"DBHDS" means the Virginia Department of Behavioral Health and Developmental Services.

## Statement of final agency action

*Please 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.*

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On December 14, 2015, in the *Virginia Register of Regulations* (Volume 32, Issue 8), the State Board of Behavioral Health and Developmental Services published as emergency regulations the Victims of Sterilization Fund Program, 12VAC35-240-10 et seq., hereafter referred to as the "VESC Regulations" (making clarifying, noncontroversial amendments to permanent regulations).

The combined emergency and standard (NOIRA) regulatory action was started on July 15, 2015. The current regulations were approved as emergency by the Governor on November 20, 2015, and expire on May 20, 2017. Because of the noncontroversial nature of the regulations, on April 13, 2016, the State Board approved changing from a standard permanent process to a fast track permanent process. At the October 7, 2016, meeting, the board approved the amendments to the language.

## 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.*

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Code of Virginia § 37.2-203 Powers and Duties (State Board of BHDS)

Chapter 665 of the 2015 Acts of Assembly (the Budget Bill) enacted the Commonwealth's Compensation for Victims of the 1924 Eugenical Sterilization Program on March 26, 2015, and required emergency regulations.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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This regulation provides administrative guidelines for appropriate documentation to verify the claims of and to compensate individuals who were victims of forced sterilization pursuant to the Virginia Eugenical Sterilization Act and who were living as of February 1, 2015 (up to \$25,000 per individual). It also provides an administrative process for handling all claims.

### Rationale for using fast-track process

*Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

Since the current regulations were approved as emergency by the Governor on November 20, 2015, there have been no complaints filed by the public about the administrative structure for compensation.

### Substance

*Please 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.*

The substantive changes are intended to make the process more flexible for those claimants who clearly are known to the agency or organization that provides care, but due to certain life circumstances such as extended residence in a facility or lack of family documentation, may not have typical forms of identification. Also, if an individual has an outdated photo identification card but is no longer physically able to obtain one, the new language allows the department reasonable flexibility to consider other documentation to confirm identity.

The changes from the emergency regulation currently in effect to this permanent regulation are to:

- Clarify appropriate documentation for proof of identity, adds to the list of documents that are acceptable, and adds language for flexibility regarding the availability of identification with both a photographic image and a signature, and to submit additional documents.
  - Specifically, the changes state that identification bearing a photographic image is 'preferred;' that identification from U.S. territories, a U.S. military dependent's card, or a Native American tribal document is acceptable.
- Make clear the need to document proof of any name change and lists the following as acceptable proof: marriage license, divorce decree, death certificate, adoption record, court order approving a legal change of name, or other legal document indicating an official name change.
- Give the department discretion to deem other documents than those listed elsewhere in the regulation as sufficient to prove a claimant's identity.
- Allow the department to use a cross match with a federal or state government data system to establish a claimant's identity.

### 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 there are no disadvantages to the public or the Commonwealth, please indicate.*

The changes are intended to assist victims. There is no burden on private citizens or businesses due to these provisions.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.*

There are no applicable 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 is no locality particularly affected by the proposed regulation.

**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.*

There are no other known alternatives to administer compensation to victims of the Act.

**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.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including:</b>	There is no cost to the state to implement and enforce this regulation, with the exception of staff time; printing, postage, and phone costs of correspondence to claimants; and the
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<p><b>a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</b></p>	<p>actual compensation to claimants deemed eligible to receive it (see Report Document 200, July 1, 2016, at this link: <a href="http://leg2.state.va.us/dls/h&amp;sdocs.nsf/By+Year/RD2002016/\$file/RD200.pdf">http://leg2.state.va.us/dls/h&amp;sdocs.nsf/By+Year/RD2002016/\$file/RD200.pdf</a>).</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>There is no cost to localities as a result of this regulation.</p>
<p><b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>Victims of eugenical sterilization alive on or after February 1, 2015, or the estates of those victims.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> 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.</p>	<p>None.</p>
<p><b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>No additional costs.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>Victims of eugenical sterilization will be better able to prove identity and receive a claim for compensation, if deemed eligible.</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.*

There are no other known alternatives to administer compensation to victims of the Act.

**Public participation notice**

*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.*

**Periodic review and small business impact review report of findings**

*If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (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.*

Commenter	Comment	Agency response

The fast track is not the result of a periodic review/small business impact review.

**Family impact**

*Please assess the impact of this 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 only impact on the family from this regulatory action would be a small increase in disposable family income for those claimants deemed eligible for compensation.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. 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 follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current	Proposed new chapter-section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
Title			<ul style="list-style-type: none"> <li>Changes the title to Victims of Eugenics Sterilization Compensation Program. It is important to make clear that the compensation is only applicable to those sterilized as a result of the eugenics efforts.</li> </ul>
10		Definitions	<ul style="list-style-type: none"> <li>Nonsubstantive edit on two terms.</li> </ul>
20		Eligibility criteria	<i>No edits.</i>
30		Claims for compensation	<p>Adds language in subsection 'C' to:</p> <ul style="list-style-type: none"> <li>Clarify appropriate documentation for proof of identity, and adds to the list of documents.</li> <li>Adds language for flexibility regarding the availability of identification with both a photographic image and a signature, and to submit additional documents.</li> <li>Make clear the need to document proof of any name change.</li> <li>Allow the department to use a cross-match with a federal or state government data system to establish a claimant's identity.</li> </ul>
40		Screening	<ul style="list-style-type: none"> <li>Clarifies what is meant by a 'complete' application.</li> <li>Makes clear the requirement that the department must notify the claimant in writing if an application is closed and the notice must indicate a new application may be submitted in the future.</li> </ul>
50		Review panel	<ul style="list-style-type: none"> <li>Nonsubstantive edit.</li> </ul>
60		Requests for reconsideration	<ul style="list-style-type: none"> <li>Nonsubstantive edit.</li> </ul>
70		Compensation	<ul style="list-style-type: none"> <li>Clarifies the difference between 'verified' and 'eligible.'</li> </ul>