



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	State Board of Social Services
VAC Chapter Number:	22 VAC 40-910
Regulation Title:	General Provisions for Maintaining and Disclosing Confidential Information of Public Assistance, Child Support Enforcement, and Social Services Records
Action Title:	Establish New Regulation
Date:	June 18, 2003

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

This regulation replaces an emergency regulation that expires on August 31, 2003. The regulation establishes separate sections for the confidentiality of public assistance, child support enforcement, and social services programs administered by the Department of Social Services and local departments of social services. Except as provided by federal and state laws and regulations, no records or information concerning applicants for and recipients of public assistance or child support are accessible except for purposes directly connected with the administration of the public assistance and child support enforcement programs. Social services records and information are confidential except they are accessible to persons having a legitimate interest in accordance with federal and state laws and regulations.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

The State Board of Social Services approved the final regulation 22 VAC 40-910 – 10 et seq., *General Provisions for Maintaining and Disclosing Confidential Information of Public Assistance, Child Support Enforcement, and Social Services Records*, on June 18, 2003.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

This regulation replaces an emergency regulation that expires on August 31, 2003. Chapter 518 of the 2001 Acts of Assembly directed promulgation of the emergency regulation.

Pursuant to § 63.2-102 of the Code of Virginia, (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.2-102>), except as provided by federal and state laws and regulations, no records or information concerning applicants for and recipients of public assistance or child support shall be made available except for purposes directly connected with the administration of the public assistance and child support enforcement programs.

In accordance with § 63.2-103 of the Code of Virginia, (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.2-103>), any records established pursuant to § 63.2-1902 of the Code of Virginia, shall be available only for the enforcement of support of children and their caretakers and to the Attorney General, prosecuting attorneys, law-enforcement agencies, courts of competent jurisdiction and agencies in other states engaged in the enforcement of support of children and their caretakers.

Pursuant to §§ 63.2-104 and 63.2-105 of the Code of Virginia, (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.2-104>, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.2-105>), social services records and information are confidential except they are accessible to persons having a legitimate interest.

Pursuant to § 63.2-217 of the Code of Virginia, (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.2-217>), the State Board of Social Services has authority to

promulgate rules and regulations necessary for the operation of public assistance, child support enforcement, and social services programs.

The Office of the Attorney General has certified that the State Board of Social Services has the authority to promulgate this regulation and that it comports with applicable law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The public assistance, child support enforcement, and social services programs are essential to protecting the health, safety and welfare of citizens. Implementation of this regulation assists these programs in protecting the health, safety and welfare of citizens by ensuring that public assistance, child support enforcement, and social services confidential client information will be protected and released only according to federal and state laws and regulations. The existing structure of confidentiality provisions does not effectively control information about individuals. There are a myriad of state laws and regulations pertaining to confidentiality of public assistance, child support enforcement, and social services information dispersed throughout the social services sections of the Code of Virginia and Virginia Administrative Code. Such a structure can result in the oversight of confidentiality requirements and the release of inappropriate identifiable personal information. This regulation establishes separate sections for public assistance, child support enforcement, and social services programs. Each section includes the applicable statutory and regulatory citations and/or provisions related to confidentiality. Separate comprehensive sections for public assistance, child support enforcement, and social services programs are necessary to ensure compliance with confidentiality requirements thereby affording greater protection of privacy to all Virginians.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The regulation establishes separate sections for the confidentiality of public assistance, child support enforcement, and social services programs administered by the Department of Social Services and local departments of social services. Except as provided by federal and state laws and regulations, no records or information concerning applicants for and recipients of public assistance or child support are accessible except for purposes directly connected with the administration of the public assistance and child support enforcement programs. Social services

records and information are confidential except they are accessible to persons having a legitimate interest in accordance with federal and state laws and regulations.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 include a sentence to that effect.

The primary advantage of the regulation to the public, the Department of Social Services and the Commonwealth is that it ensures that public assistance, child support enforcement, and social services client information will be protected and released only according to federal and state laws and regulations. Such a regulation affords greater protection of privacy to all Virginians. There are no known disadvantages of the regulation to the public or the Commonwealth.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

One technical change was made in 22 VAC 40-910-20 D 1.

As the result of a public comment, 22 VAC 40-910-30, Notification of release of confidential client information, was modified to state that "reasonable efforts" must be made to notify the client or legally responsible person within five business days after disclosure when a client record is released because "a court of competent jurisdiction has ordered the production of client records and the department, agency or provider does not have sufficient time to notify the client or legally responsible person before responding to the order" (22 VAC 40-910-20 D 1a).

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

The proposed regulation was published in The Virginia Register on February 10, 2003, with the 60-day public comment period ending April 11, 2003. One comment was received during the public comment period. The organization was concerned about the requirement in 22 VAC 40-910-30 to notify the client or legally responsible person within five business day after disclosure when a record is released due a court order as described in 22 VAC 40-910-20 D 1a. Often the current whereabouts of the client is unknown. The final regulation was modified to state that "reasonable efforts" must be made to notify the client or legally responsible person.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

- Section 10 provides a definition section for the regulation.
- Section 20 provides a general provisions section for the regulation.
- Section 30 describes the notification of release of confidential client information.
- Section 40 describes the consent process for the release of client information.
- Section 50 describes the requirements for the release of client records for research purposes.
- Section 60 describes the client's right of access to client information.
- Section 70 describes the requirement that the department, agency or provider must inform clients in writing that client information must be confidential pursuant to federal and state laws.
- Section 80 provides a section for the maintenance and disclosure of confidential client information pertaining to public assistance.
- Section 90 provides a section for the maintenance and disclosure of confidential client information pertaining to child support enforcement.
- Section 100 provides a section for the maintenance and disclosure of confidential client information pertaining to social services programs.
- Section 110 provides that this regulation does not supersede existing regulations pertaining to the confidentiality of client records and should be read in conjunction with all public assistance, child support enforcement, and social services confidentiality regulations under Title 22.