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Fast-Track Regulation Agency Background Document

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| 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 | Implement Periodic Review Recommendations |
| Date this document prepared | |

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 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*.”

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.

The State Board of Social Services took final action on the Child Support Enforcement Program regulation on XXX.

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.”

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

The mandate for this action is a periodic review. 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 of Social Services 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,

§§ 63.21914, 63.21918, 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 is intended to solve.

This regulatory change is needed to implement periodic review recommendations.

The change is essential to the welfare of citizens because 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:

- Modernizing definitions to be consistent with technological and legal changes
- Conforming Section 240 to federal regulations on imputation
- Removing an obsolete threshold for when parents can request review of their child support obligations.
- Adding the timeframe for appeals of federal passport denial notices

In addition, the action makes several non-substantive changes to clarify language.

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

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.

Other State Agencies Particularly Affected

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

Localities Particularly Affected

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

Other Entities Particularly Affected

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

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

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| <p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> 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 | <p>Because the changes are technical or clarifying, there are no costs beyond this update.</p> |
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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. |

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.

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| 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

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.

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| 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.

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.

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.

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.

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.

Consistent with § 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 Thomasine Stewart, Division of Child Support Enforcement, 801 East Main Street, 12th Floor, Richmond, VA 23219, 804-802-4783 (phone), 804-726-7476 (fax). Thomasine.r.stewart@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.

There will not be a public hearing associated with this 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 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 |
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| 10 | | Defines terms used throughout the Child Support Enforcement regulation. | This section requires technical updates to reflect the issuance of other regulations and/or statutes, and modern technology. "Application" is updated to reflect the use and acceptance of electronic applications and signatures. "Good cause" is updated to replace the reference to "TANF" with "public assistance," to align with the definition § 63.2-100. |
| 90 | | Four steps are required after establishing a case, one of which is verifying case information which is not verified. | The section requires a grammatical update, to clarify the start of the verification process. |

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| 240 | | <p>Defines additional factors for administrative imputation of income. Deviations from the child support guidelines are allowed in certain situations. 22VAC-40-880-240.1.b. provides that when actual income is not available, the support amount will be based on the federal minimum wage multiplied by 40 hours/week and converted to a monthly amount by multiplying the result by 4.3333,</p> | <p>The section requires an update to bring it in line with updated federal law 45 C.F.R. 302.56(c)(1). If actual income is not available, imputation will take into account several factors, including but not limited to the noncustodial parent’s assets, residence, employment history, job skills, and other factors.</p> |
| 250 | | <p>Provides for reviews of child support obligations; among other reasons, it is possible to 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 exceeding \$250 per child per year.</p> | <p>The section requires technical updates. The \$250 threshold no longer applies based on updates to the Code of Virginia in 2014 (Chapter 667 of the Acts of Assembly) and is being removed. Specifies unreimbursed medical/dental expenses as reasonable and necessary.</p> |
| 320 | | <p>Provides the rules with respect to when the Department will initiate an income withholding order. In initial and modified administrative support orders, the agency must initiate income withholding order unless the parties agree to a written alternative payment arrangement.</p> | <p>The section is updated to conform with the language in § 63.2-1923 of the Code of Virginia. Exclusionary good cause language is added. Section amended to include when income withholding takes place.</p> |
| 350 | | <p>Provides the requirements for use of distraint, seizure and sale of real property by the department. The director of the division or his designee gives final approval for use of distraint, seizure or sale.</p> | <p>The section is updated to clarify that the director may be of either gender.</p> |
| 430 | | <p>Provides three factors for determining the validity of an appeal. The appeal must be in writing. If the appeal is delivered personally, it must be received within 10 business days of service of the notice of the proposed action. If mailed, it must be postmarked within 10</p> | <p>This section is simplified by combing the timeline for appeal into two subdivisions. A subsection is added to indicate appeal timeframes for federal passport denials. The appellant has 30 days form the date of the Pre-Offset Notice to appeal. The Personal Responsibility and Work Opportunity Act of 1996 sec 454(42 U.S.C. 654), paragraph 31, subparagraphs A and B authorize the</p> |

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| | | business days from the date of service. | state agency to have a procedure for certifying and proving notice to the individual concerned. |
| 480 | | Provides for cooperation between state agencies. | The section requires technical updates to correct citations to provisions of the Code of Virginia and to clarify the Division's authority to pursue direct enforcement when a parent lives in another state by removing language requiring two-state solutions in all such cases. Direct enforcement refers to when the division sends an <i>Income Withholding Order</i> directly to the NCP'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. |

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 |
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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 |
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