



COMMONWEALTH of VIRGINIA
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FROM: JOSH S. OURS
Sr. Assistant Attorney General

Date: February 23, 2023

Re: Submission to Amend 22VAC40-880 Child Support Enforcement Regulations

I have reviewed the attached amendments to 22VAC40-880. Pursuant to Office of Regulatory Management’s review procedures issued in accordance with Executive Order 19 (2022), the Office of the Attorney General (OAG) is charged with reviewing the proposed amendments and producing “a memorandum assessing the agency’s legal authority to promulgate the regulation, identifying any specific mandate¹ that requires the regulation, and determining that the content of the proposed regulation does not conflict with applicable law.” The OAG “may also provide any advice, recommendations, or other comments for consideration by the Governor with respect to” the regulation.

Authority: Virginia Code § 63.2-217 states that the State Board of Social Services shall adopt regulations “as may be necessary or desirable to carry out the purpose of this title.” Therefore, the State Board has the authority to amend 22VAC40-880 as proposed, subject to compliance with Article 2 of the Administrative Process Act, Executive Order 19 (2022), and the procedures of the Office of Regulatory Management.

¹ Per the Office of Regulatory Management’s regulation review procedures, “‘mandate’ refers to 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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Mandate: Virginia Code § 2.2-4101 defines “regulation” as “any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an agency. . . .” The elements of DCSE’s program manual that address Family Engagement Services and the interaction between Family Engagement Services and court enforcement actions meet this definition and therefore require promulgation of regulations.

Conflicts with applicable law: None.

Comments: The proposed regulations are a result of collaboration between DCSE and OAG to define the relationship between Family Engagement Services and enforcement of support obligations. The goal of the resulting regulations is to allow DCSE to offer a range of services designed to improve long-term payment of child support while ensuring that short-term support needs are met by providing timely access to Virginia’s courts.

Please contact me if you have any questions.

22VAC40-880-390 Additional remedies

In addition to state administrative enforcement remedies, the department shall utilize available federal enforcement remedies to enforce child support obligations and collect accumulated support arrearages. Use of state and federal enforcement remedies shall continue until the noncustodial parent is compliant with the support order.

22VAC40-880-800 Family Engagement Services

The Division of Child Support Enforcement is authorized to establish programs to provide Family Engagement Services to persons following an administrative or judicial determination that such services may assist the person to pay support owed. Such programs shall provide referrals to (i) employment services, to include employment assessment, employment search, and employment training; (ii) family services, including parenting skills, co-parenting skills, and relationship-building activities for parents and children; (iii) educational services, including GED preparation and GED testing; (iv) housing services, including referrals to organizations that operate shelters and provide subsidies; (v) document assistance, including referrals to organizations and assistance in securing vital records, driver's licenses, commercial driver's licenses, or other documents; (vi) social services, health and mental health services, and substance abuse services; and (vii) any other services that would assist the person to pay support owed. These services may be offered in conjunction with, but not as a substitute for, state and federal enforcement remedies.

22VAC40-880-810 Family Engagement Services, Case Management

Programs authorized pursuant to 22VAC40-880-800 shall include case management services. The case manager shall conduct an orientation session with a new participant and create a services plan within 30 days of referral to the program. The services plan shall identify services, programs, and requirements necessary to comply with the administrative or court referral to the program. The services plan shall also provide that the non-participating party be given monthly status updates regarding compliance with and status of the services plan. The case manager shall (a) assist the participant to contact and make appointments with organizations offering the required services and programs, (b) provide the participant with appointment reminders and follow-up with the participant and service providers to determine any next steps that may be required, (c) track the participant's compliance with the services plan, the support order, and the terms of the administrative or court referral to the program, and (d) in cases involving court referrals to the program, provide to the court timely and regular reports regarding the participant's compliance with the services plan and with the court's order(s).

During the first 90 days after an administrative referral to the program, participants shall not be referred for civil contempt if they are substantially compliant with the services plan. Upon conclusion of this 90-day period, participants who are substantially compliant with the services plan and not paying support as ordered may remain in the program but shall be referred for civil contempt. Participants who are, at any time, not substantially compliant with the services plan shall be referred for civil contempt. If, after referral for civil contempt, a court orders the parent to continue participating in Family Engagement Services, the participant must comply with any additional terms of the court referral.