



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-740
Regulation title	Adult Protective Services
Action title	Amend Adult Protective Services
Date this document prepared	December 15, 2010

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*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The proposed regulatory action amends and provides a general review of 22VAC40-740, Adult Protective Services. 22VAC40-740 establishes standards for Adult Protective Services (APS) investigations and the provision of services after an investigation has been completed. It also provides guidance for mandated reporting of adult abuse, neglect and exploitation and the process for imposing a civil penalty on certain individuals for failure to report. The regulation ensures consistent definitions and actions are used for reporting adult abuse, neglect and exploitation, during APS investigations and during the provision of services to adults.

The purpose of the amendments to 22 VAC 40-740 is to clarify regulation content and to comport with guidance on the data entry requirements in ASAPS, the statewide Web-based case management and reporting system for the APS Program.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The legal bases for this regulation are §§ 63.2-217 and 63.2-1603 through 63.2-1610. These sections provide general authority for the development of regulations for program operation and authority for the APS Program.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The proposed regulatory action is necessary to ensure that regulation content correctly addresses APS definitions and procedures. Clear and concise regulation content ensures that the adult's health and safety needs are addressed through APS reporting and during APS investigations and service provision.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

Proposed changes include clarifying definitions and other regulation text. Other revisions to the regulation content may also be proposed depending on comments received.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

No alternative action was considered as this regulatory process meets the requirement for periodic review of the regulation and will ensure the regulation is up-to-date and clear.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also 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 comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email, or fax to **Paige McCleary, Adult Services Program Consultant, 801 East Main Street, Richmond, VA 23219; paige.mccleary@dss.virginia.gov; or 804-726-7895 (fax)**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

In addition, the agency is seeking information on (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) 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.

A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

DSS plans to use a participatory approach in the development of the proposal. Input will be sought from stakeholders, including LDSS APS supervisors and workers; agencies and individuals who provide services to adults; and organizations advocating on behalf of elderly individuals and individuals with disabilities.

Family impact

Assess the potential 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 amendments will have a positive impact on family stability by ensuring that family members who are elderly or disabled and who are being abused, neglected or exploited or are at risk of abuse, neglect or exploitation receive prompt and appropriate interventions from APS.

The proposed regulatory action will have no impact on the institution of the family. It will have no effect on the authority and rights of parents in the education, nurturing, and supervision of their children. The proposed regulatory action will not impact marital commitment or disposable family income.

Small business impact review

*Pursuant to § 2.2-4007.1 E and F each existing regulation shall be reviewed **at least once every five years** to ensure that it minimizes the economic impact on small businesses.*

If this NOIRA will include a review of the entire regulation for small business impact, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) 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. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

DSS believes that this regulation is needed to ensure that standards for APS reporting, investigations and provision of protective services are maintained. The regulation content will be made clearer through this regulatory action. This regulation does not duplicate or conflict with any state or federal regulations. Clarification of regulation content will include data entry standards for the statewide APS database and case management system (ASAPS).

Proposed amendments to this regulation will have little impact on small business. Regulation content addresses the investigation process including the responsibilities of the APS worker as well as the provision of services to the adult who is being abused or at risk for abuse. This regulation provides guidance to certain licensed individuals, including some owners or operators of small businesses such as an assisted living facility or home care agency, who are mandated reporters of suspected adult abuse, neglect and exploitation pursuant to § 63.2-1606. The regulation also addresses the imposition of civil penalties for a mandated reporter's failure to report suspected adult abuse, neglect or exploitation pursuant to § 63.2-1606 of the Code of Virginia.