



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Virginia Department of Social Services
VAC Chapter Number:	22 VAC 40-910-10, et seq.
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:	October 16, 2002

This information is required pursuant 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*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This proposed regulation replaces an emergency regulation that expires on August 31, 2003. The proposed 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.

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 must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

This proposed 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.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed 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 providing detail of the regulatory action's changes.

The proposed 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 proposed regulatory action. The term "issues" means: 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 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.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Implementation of the proposed regulation does not produce a fiscal impact on the Commonwealth.

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 cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed 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.

Alternatives

Please describe the specific 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.

Promulgation of this regulation establishes a section of general provisions that apply to the confidentiality of public assistance, child support enforcement, and social services client information. A new regulation is the least burdensome method to effect the new requirements. An alternative approach is to create three regulations. The first regulation would address the confidentiality of public assistance, the second regulation would address the confidentiality of the child support enforcement program and the third regulation would address the confidentiality of social services programs. Three regulations would be burdensome and confusing. Three separate and identifiable regulations would require repetition of the general provision section and may lead to confusion.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No comments were received during the Notice of Intended Regulatory Action comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The regulation is clearly written, with commonly used words and phrases, and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The regulation will be reviewed four years from the effective date or sooner if required by federal or state statutory changes.