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Proposed Regulation Department Background Document

Department name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40 - 325
Regulation title	Fraud Reduction/Elimination Effort
Action title	Redefine Criteria for Reimbursement
Document preparation date	Enter date this form is uploaded on the Town Hall

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The revised regulation modifies the formula for reimbursement to local departments of social services for the FREE Program approved direct costs and support operation costs. The current regulation requires that in order to receive full reimbursement, a local department must: 1) comply with all pertinent law, regulation and policy, and 2) collect overpayments, net refunds due to the federal government, which equal or exceed the local share of FREE Program costs. The revised regulation reiterates that reimbursement for program costs shall be paid from available federal funds, general funds and balances in the Fraud Recovery Special Fund. However, instead of commingling all collections statewide (past practice), the Department will incorporate the allocation of FREE program-related funds in its standard process in which the Commissioner of the Department convenes a group of local department representatives and senior department managers to develop a suitable formula for the allocation of funds to localities.

In addition to the reimbursement formula modification, the Department will require local fraud units to meet performance expectations developed by the Department.

Basis

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

Section 63.2-217 of the Code of Virginia provides that the State Board of Social Services shall adopt such regulations as necessary to carry out the purpose of Title 63.2 of the Code of Virginia. Section 63.2-526 mandates the Department of Social Services to establish a statewide fraud control program. The provisions of 22 VAC 40-325 are directly related to the statutory authority by describing the requirements of both the Department of Social Services and the local departments of social services for establishing and maintaining the statewide fraud control program.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

Pursuant to §63.2-526D of the Code of Virginia, the Fraud Reduction/Elimination Effort Program, a statewide public assistance fraud prevention and investigation program, is funded from (i) general funds appropriated for fraud control activities, (ii) any federal funds available for this purpose, and (iii) balances in the Fraud Recovery Special Fund (Fund). The Fund is composed of overpayment moneys recovered by local departments of social services related to Temporary Assistance to Needy Families (TANF) and Food Stamp programs and other federal benefit programs administered by the Department net of any refunds due the federal government. Funds from the aforementioned three sources reimburse local departments of social services' direct program costs. With state general funds unappropriated for this program after the first year of program operation, the program was funded at the rate of 50% by available federal TANF and Food Stamp Program administrative funds and at the rate of 50% by the balances in the Fund. Given the limited financial ability of present and past public assistance customers who must make financial restitution, and the limited staffing resources of local departments of social services to aggressively pursue overpayment recoveries, the Fund balances are not sufficient to match the federal share of funding. The program is therefore unable to support itself under the current funding methodology. The primary goal of the amended regulation is to redefine the criteria for reimbursement to local departments for direct program costs, such that local agencies would be reimbursed in conformance with the funding formula resulting from the Commissioner's collaborative state-local agency discussions. Redefining reimbursement criteria to adequately fund the FREE Program protects the welfare of citizens by ensuring the continuation and maintenance of the Department's statewide fraud reduction/elimination effort.

The Department is also amending the regulation as necessary to address other programmatic issues regarding the FREE program.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The criteria for reimbursement for local program costs is redefined in order to ensure the continuation of the statewide fraud program. Revisions are made to include the responsibility of fraud detection, an integral component of fraud prevention and investigation. Additionally, the definition's section of the regulation is expanded for clarity. Maintaining the statewide Fraud Reduction/Elimination Effort Program enhances program integrity, and promotes the recovery of program overpayments due to the occurrence of fraud; thus contributing to the welfare of citizens.

Issues

Please identify the issues associated with the proposed regulatory action, 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 department or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The advantage to the public and the Commonwealth in implementing the amended regulation is that program integrity of the Department's benefits programs is not jeopardized. Maintaining the FREE Program ensures that public assistance benefits and services are received only by eligible individuals, and in the correct benefit amounts. There are no disadvantages in amending the regulation.

The primary issue associated with the revised regulation is the removal of the provision that local departments of social services, in order to receive full reimbursement of direct local cost associated with the FREE Program, recover TANF and Food Stamp overpayments in an amount, net refund to the federal government, that equal or exceed their local share of direct FREE program costs.

Section II.C.1.b of the regulation as presently written states that should a local department not recover the state share of collections equal to or exceeding the local share of cost, full reimbursement of local department direct FREE Program cost will not be paid. No provision addresses the amount of reimbursement to be paid when a local department's state share of collections does not equal its local share of FREE Program costs. Therefore, a local department not recovering overpayments matching program costs would receive no reimbursement; thus incurring a local share of cost of either 50% or 20%, depending on the funding formula in use.

Local departments presently do not realize their full recovery potential. In addition to activity associated with investigations of on-going fraud situations, local departments perform investigations on questionable applications, which if the application is denied due to information revealed from the investigation, a benefit cost saving occurs. However, local departments received no monetary incentive for this activity.

One of the provisions of §63.2-526B of the *Code of Virginia* is that each local department shall establish fraud prevention and investigation units only insofar as money is appropriated therefor. A local department, therefore, could terminate its fraud program if reimbursement is not available. Approving the amended regulation would require the Department to implement an alternative methodology for funding local departments.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	0
Projected cost of the regulation on localities	0
Description of the individuals, businesses or other entities likely to be affected by the regulation	N/A
Department’s best estimate of the number of such entities that will be affected	0
Projected cost of the regulation for affected individuals, businesses, or other entities	0

If funds are not available, the localities are under no obligation to operate the program.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the department to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

A critical element of maintaining the Fraud Reduction/Elimination Effort Program is funding. The level of recovery of Temporary Assistance to Needy Families (TANF) and Food Stamp overpayments, a major component of the fraud program funding stream, is not sufficient to support the program. The federal government has taken reimbursement to states for Child Care Program fraud investigation activity under consideration. If implemented, such reimbursement will reduce dependency on TANF and Food Stamp overpayment recoveries.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the department response.

Commenter	Comment	Department response
Robert A. Cox, III	To ensure maximizing statewide collections effort, recommend funding fraud program through state general funds, and establish a collections program funded through recovery of overpayments.	General funds are currently limited. Suggestions will be considered when revising the regulation.
Shawn M. Rozier	Regulations require collections to fund the FREE Program. Department provides minimal training to locals on collection activity. Current program does not encourage fraud prevention. But fraud must be permitted in order to establish claims. Recovery of claim amounts fund the FREE Program.	Concur that FREE Program is flawed and is unable to support itself under current funding methodology. The Division of Fraud Management is consulting with Finance Division to secure additional funding. Amended regulations will be proposed to revise the funding methodology.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The proposed regulatory action will maintain the Department’s level of integrity by the continuance of the statewide fraud investigation program; thus ensuring that assistance program benefits are available to eligible families.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10		Definitions	Revises definition of Food Stamps to reflect electronic issuance. Adds definitions for investigation, performance expectations and public assistance. Amends other definitions to update Code of Virginia citations, terms, and to provide clarification. Deletes definition for workload measures.
20		<p>Refers to local fraud workers</p> <p>Requires that in order to receive full reimbursement, a local department must collect overpayments, net refunds due to the federal government, which equal or exceed the local share of FREE Program costs</p>	<p>Changes reference from local fraud workers to investigators.</p> <p>Provides that the Department will develop, implement and monitor local fraud unit performance expectations.</p> <p>Clarifies information to be included in local program operation plans. Requires local departments to provide the Department, upon request, with accounting of FREE program expenditures.</p> <p>Requires local departments to establish and maintain dedicated FREE units as a condition of receiving reimbursement.</p> <p>Reiterates that reimbursement for program costs shall be paid from available federal funds, any available general funds and balances in the Fraud Recovery Special Fund. The state share of collections will be applied toward reimbursement of the local share of costs.</p>