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1. Nondiscrimination in Eligibility

The Virginia Department of Social Services requires that all individuals be assured of the uniform application of procedures in determining eligibility for services and financial assistance. There must be no discrimination against applicants or participants in any aspect of program administration for reasons of age, race, color, sex, disability, sexual orientation, marital/family status, religion, national origin, or political beliefs.

1.1. Discrimination Complaint Procedures

Discrimination complaints must be filed within 180 days of any incident. A person may file a discrimination complaint in writing to the local agency.

Whenever possible, the complaint should include the following:

- Name, address, and telephone number or other means of contacting the person alleging discrimination.
- The name and address of the agency that is accused of discriminatory practices.
- The nature of the incident, action, or the aspect of program administration that led the person to allege discrimination.
- The reason for the alleged discrimination (age, sex, race, religion, etc.).
- The names, addresses, and titles of persons who may have knowledge of the alleged discriminatory acts.
- The date or dates on which the alleged discriminatory actions occurred.

If the individual is not satisfied with the result of the agency investigation of discrimination, the individual may request a hearing by contacting:

Office of Civil Rights, Region III
U.S. Department of Health and Human Services
150 South Independence Mall West
Suite 372 Public Ledger Building
Philadelphia, PA 19106

Requests must be in writing and filed within 30 days after you receive the findings of the local agency.

2. Confidentiality

2.1. General Information

The Code of Virginia (§63.2-102) provides that all records, information and statistical registries of the Virginia Department of Social Services and of the local boards and other information that pertains to public assistance shall be confidential and shall not be disclosed except to persons authorized by state and federal law and regulation.

All client records, which could disclose the individual's identity, are confidential and must be protected in accordance with federal and state laws and regulations.

Confidential information includes but is not limited to:

- Name, address and any type of identification numbers assigned to the individual
- Public assistance, child support enforcement services, or social services provided to the individual
- Information received for verifying income and eligibility
- Evaluation of the individual's confidential information
- Social and medical data about the individual

Except as provided by state or federal regulation, no record, information or statistical registries concerning applicants for and recipients of public assistance shall be made

available except for purposes directly connected with the administration of such programs.

Purposes directly related to the administration of a public assistance program include but are not limited to:

- establishing eligibility
- determining the amount of public assistance
- providing services for public assistance individuals; and
- conducting or assisting in an investigation or prosecution of a civil or criminal proceeding related to the administration of the public assistance program.

If a request for a record or information concerning individuals applying for or receiving public assistance is made to the Virginia Department of Social Services or a local department for a purpose not directly connected to the administration of such programs, the Commissioner or local director shall not provide the record or any information unless permitted by state or federal law or regulation.

As part of the application process for public assistance, the individual or legally responsible person must be informed of the need to consent to third-party release of client information necessary for verifying his eligibility information or information provided.

2.2. Consent Process

Whenever an organization that is not performing one or more of the functions listed above or does not have a legitimate interest pursuant to 22 VAC40-910-100 requests information, the person or organization must obtain written permission for the individual or the legally responsible person for the release of the information. An authorization for release of information form obtained by the department, agency or provider also satisfies his requirement. The consent for release of information must contain the following:

- the name of the entity supplying the information and the name of the requesting party
- the consent must be signed and dated by the individual or legally responsible person. The individual or legally responsible person may add other information, which may

include, but is not limited to, a statement specifying the date, event or condition upon which the consent expires.

A Uniform Authorization to Use and Exchange Information also known as the Consent to Exchange Information form is an approved document for obtaining consent to release information. This form is located at <https://fusion.dss.virginia.gov>

2.3. Release of Records without Consent

Records may be release without the individual's written permission if:

- A court of competent jurisdiction has ordered the production of client records and the department, agency or provider does not have sufficient time to notify the client or legally responsible person before responding to the order

If a court orders production of client records and consent is not obtained before the release of the client records, the department, agency or provider must make reasonable efforts to provide written notification to the client or legally responsible person within five business days after disclosure.

Records may also be released if:

- There is a request for research as provided in 22 VAC 40-910-50.

The Commissioner of the Department for Aging and Rehabilitative Services and his agents shall have the discretion to release non-identifying statistical information. A

client's written permission is not required in order to release non-identifying statistical information.

The Commissioner of the Department for Aging and Rehabilitative Services and his agents do not have to obtain consent from the client to obtain or review client records.

2.4. Accuracy of Records

The Government Data Collection and Dissemination Practices Act (§2.2-3800-3809) mandates that all LDSS agencies ensure that all personal information is accurate and current, and appropriate and relevant for the purposes for which it has been collected.

Each locality should establish an uncomplicated procedure to allow an individual to correct, erase or amend inaccurate, obsolete or irrelevant information.

3. Fair Hearings

3.1. Local Agency Conference

When an individual receives notice of an adverse action, the individual must be offered the opportunity to request an agency conference. At the conference the individual may be represented by an authorized representative, legal counsel, relative or friend. Upon receipt of a request for a conference, the local agency must schedule the conference within ten working days from the date of the request. The individual's failure to request a local agency conference has no effect upon the individual's right to appeal and have a fair hearing.

The local agency conference allows the individual to request and receive an explanation about the adverse action affecting assistance. The conference may be attended by the eligibility worker, but must be attended by an eligibility supervisor or the director, the individual or the individual's representative. The individual should be given the opportunity to verbalize reasons for disagreeing with the agency action. The agency shall respond to each reason given by the individual. The conference should reveal that the proposed action is appropriate or that the proposed action is inappropriate because:

- the client is now able to immediately provide the information that had not been previously provided; or
- there has been a change in circumstances that affects some area of eligibility.

The local agency conference may or may not result in a change in the agency decision regarding the action. Regardless of the result of the conference, if an appeal

has been filed, the client must be provided with a fair hearing unless the individual makes a written withdrawal of the request for a hearing. If the agency decision is to not take action or to take action different from the action indicated on the advance notice, the individual must be advised in writing and a notation to the same effect made on the agency copy of the advance notice. If the individual is not satisfied with the agency action following the conference and wishes a request for a fair hearing to stand, the fact that the conference was held will in no way affect the appeal or the required time limits for filing or implementing a decision.

3.2. Right of Appeal

The Code of Virginia (§63.2-517) provides for the opportunity for a Fair Hearing to individuals affected by the administration of any public assistance program.

Any individual has the right to appeal and receive a fair hearing because:

- an application for assistance is denied or is not acted upon with reasonable promptness; or
- the individual is aggrieved by any other agency action affecting entitlement to or receipt of assistance, or by agency policy as it affects the individual's situation.

The appeal period for Auxiliary Grant decisions is 30 days after the individual receives written notice of the local agency's decision. Appeals related to an Auxiliary Grant decision must be made in writing to:

Virginia Department of Social Services
Fair Hearings and Appeals Unit
Benefits and Services Section
801 E. Main Street, 3rd floor
Richmond, VA 23219-3301

When an appeal request is received, an administrative hearing is scheduled by a hearing officer. Administrative hearings are conducted by impartial hearing officers designated by the Commissioner of the Virginia Department of Social Services.

Information and referral services shall be provided to help individuals make use of any legal services available in the community. Contact information for Virginia Legal Aid Programs may be found at www.valegalaid.org.

Upon request, the local agency shall make available information from the case file for the individual to determine whether a hearing should be requested or to prepare for a hearing, provided that confidential information is protected from release.

3.3. Continuation of Assistance

The local agency must be aware that an appeal was made during the required time frame prior to authorizing continued participation. This means that the local agency must have:

- received the request directly from the individual, or
- written or verbal confirmation from the VDSS Department of Fair Hearings and Appeals that a timely request was received.

If a hearing request is not made within the period provided by the adverse action notice, benefits shall be reduced or terminated as provided in the notice. If the individual established that the failure to make the request within the advance notice period was for good cause, the hearing officer shall require that the local agency reinstate the benefits to the prior basis.

The agency shall inform the individual in writing that the assistance is being continued in the same amount pending the hearing decision.

3.4. Exceptions to Continuation of Assistance

In the following situations advance notice will be sent, but assistance will not be continued during the appeal process:

- the agency has factual information verifying the death of the recipient.
- the agency has verified that the recipient is in an institution where AG eligibility does not exist.
- the recipient no longer resides in an ALF authorized to operate or an approved AFC home or the individual has been admitted to an ALF or AFC with a lower rate.
- the individual's whereabouts is unknown and agency mail directed to the individual has been returned indicating no forwarding address. The recipient's check must, however, be made available if the individual's whereabouts becomes known during the payment period covered by the returned check.
- when the individual requests in writing that assistance not be continued.

3.5. Preparation for the Hearing

The appeal request, upon receipt by the Hearings Manager, must be assigned to a hearing officer who will validate the appeal and acknowledge the request by letter to the individual with a copy to the local agency and any other appropriate parties.

The local agency must prepare a Summary of Facts of the case to be forwarded to the hearing officer and the individual or the individual's representative no fewer than five days prior to the hearing.

The Summary of Facts should include the following:

- Identifying information including, name of local agency, name, address and case number of individual;
- Date of request and reason for appeal
- Statement of agency action
 - Give a brief, factual statement of the reason for agency action, or failure to act, and the nature and date of agency action. If the individual requested a local agency conference, include date and result of the conference.
 - Discuss how information from the Auxiliary Grant program manual influenced the agency action.
- Copies of all relevant documents - notices, checklists, letters, verifications, evaluation forms, worksheets, the letter offering the customer an informal conference and any other material - must be attached and submitted with the summary of facts.
- Statement as to whether assistance is continuing in the original amount during the appeal process.

The Summary of Facts must be signed and dated by the agency director or designee. The local agency will retain a copy of the Summary of Facts, which is the official document for presentation of its case at the hearing.

If documents pertinent to the hearing are received by the local agency or there are changes in the situation following transmittal of the Summary of Facts, copies of the documents and a written statement of the changes must be mailed in advance of the hearing to the hearing officer. Copies of such additional information must also be made available to the individual or the individual's representative.

3.6. The Hearing

The hearing must be conducted at a time, date, and place convenient to the individual. Preliminary written notice must be given at least 10 days prior to the

hearing. The individual will be requested to advise the local agency immediately if the scheduled date or place is inconvenient. Without such notification, it is assumed the arrangements are convenient. The hearing may be conducted through teleconference.

The local agency is responsible for assuring that the individual has transportation to the hearing if the individual is unable to make arrangements.

When an individual, for good cause, indicates that the scheduled date is not convenient, the hearing date may be extended. The hearing officer will determine whether the provision of extension is being abused and reserves the right to set a date beyond which the hearing will not be delayed.

The hearing is to be conducted in an informal atmosphere and every effort will be made to arrive at the facts of the case in a way that will put the individual at ease. It is the hearing officer's responsibility to assure that this is done, and the hearing officer may designate those persons who may attend the hearing or the particular portion of the hearing they may attend. The hearing officer has full authority to recess the hearing or to continue to another date in the interest of fairness.

It is within the discretion of the hearing officer to designate what is pertinent to an issue on appeal and admissible as evidence during the hearing, including the entire case record, if appropriate.

If during the appeal process, the need for adjustment in eligibility or basis of issuance in favor of the individual becomes evident, reconsideration or modification of the former decision will be made by the local agency. For instance, new information may be presented, clarification of procedures may occur, or mathematical computations may need to be corrected. If such adjustment is satisfactory to the individual, he or she has the choice either of withdrawing the appeal or of having a formal decision made by the hearing officer. If such reconsideration or modification requires corrective action for prior months, payments are to be made by the local agency retroactively to the effective date of the incorrect action being appealed.

3.7. Events of the Hearing

The hearing officer will coordinate the following activities at the hearing:

- Identification of those present for the record;
- Opening statements to explain the hearing purpose, procedure to be followed, how and by whom a decision may be made and to be communicated to the individual and the local agency

and the option of either party if the decision is made by the hearing officer, to request review of the decision by the Commissioner.

- Provide the opportunity for the individual to examine all documents and records which are to be used at the hearing, present the case or have it presented by legal counsel or other person, bring witnesses, establish pertinent facts and advance arguments, and question or refute any testimony or evidence, including the opportunity to question adverse witnesses.
- Provide the local agency with the opportunity to clarify or modify statements contained in the Summary of Facts and to question the individual, his or her representative, or witnesses; and examine documents, bring witnesses, advance arguments, question evidence and submit evidence.

3.8. Duties of the Hearing Officer

The hearing officer must:

- Ensure that all relevant issues are considered
- Request, receive and make part of the record all evidence determined necessary to decide the issues being raised;
- Regulate the conduct of the hearing consistent with due process to ensure an orderly hearing;
- Render a decision.
- Prepare following the hearing, a written report of the substance of the hearing embodying the findings, conclusions, decision and appropriate recommendations.

3.9. Hearing Decision

The decision of the hearing officer shall be based exclusively on evidence and other material introduced at the hearing. The official report of the substance of the hearing, together with all papers filed in the proceeding, and the findings and conclusions of the hearing officer shall constitute the exclusive record for the decision. Such record shall be available to the individual or representative at any reasonable time at the Regional Office serving the agency.

Except as follows, the decision of the hearing officer shall be rendered within 60 days following the date the appeal request is received in the Home Office. When the individual or representative requests an extension or otherwise causes a delay in the

hearing, the time limit is extended by the number of days the hearing is delayed. The maximum period of delay is 30 days.

The decision of the hearing officer shall be final and binding when tendered in writing and shall be implemented regardless of whether a review of the hearing officer's decision by the Appeals Review Panel has been requested. Administrative action by the local agency to implement a decision must be taken no later than the 10th working day following the date of the hearing decision. If the individual is found eligible for corrective payments, these are to be made by the local agency retroactively to the effective date of the incorrect action being appealed.

The request for the Appeals Review Panel review by either party must be submitted in writing within 10 days following the date of the hearing officer's written decision with a written statement of the reasons for the objection to the decision. A copy of the review request by the local agency must be submitted to the individual.

The purpose of the Appeals Review Panel is to make recommendations to the Commissioner regarding whether changes are needed to the program manual or in the conduct of future hearings. **THE APPEALS REVIEW PANEL CANNOT CHANGE THE DECISION OF THE HEARING OFFICER.**

As provided in Section 63.2-519 of the Code of Virginia, a person aggrieved by the decision of the Hearing Officer may seek further review of the decision by the appropriate Circuit Court. An individual must appeal the decision in writing within thirty days from the date the decision was received or the date the decision was mailed to the individual. The request to appeal the hearing officer's decision should be sent to:

Duke Storen, Commissioner
Virginia Department of Social Services
801 E. Main Street
Richmond, Virginia 23219

Within thirty days after filing the notice of appeal with the Commissioner, the individual must file a petition for appeal with the appropriate Circuit Court. The individual must make sure that the petition for appeal is served on the Commissioner before the appeal can proceed in Circuit Court.

4. Fraud

Fraud is defined as a material representation relating to a past or an existing fact which is false, made with knowledge of its falsity, or in reckless disregard of the truth.

The Code of Virginia specifies that:

Any person who knowingly makes any false application for public assistance or who knowingly swears or affirms falsely to any matter or thing required by the provisions of this title or as to any information required by the Commissioner, incidental to the administration of the provisions of this title, to be sworn to or affirmed, shall be guilty of perjury and upon conviction, therefore, shall be punished in accordance with the provisions of §18.2-434 (Code of Virginia §63.2-502).

If at any time during the continuance of public assistance any change occurs, including but not limited to, the possession of any property or the receipt of regular income by the recipient that in the circumstances upon which current eligibility or amount of assistance were determined, would materially affect such determination, it shall be the duty of such recipient to notify as defined by regulation the local department of such change, and the local board may either cancel the public assistance, or alter the amount thereof. Any recipient who knows or reasonably should know that such change in circumstances will materially affect his eligibility for assistance or the amount thereof and willfully fails to comply with the provisions of this section, is guilty of a violation of §63.2-522 (Code of Virginia §63.2-513).

Whoever obtains, or attempts to obtain, or aids or abets any person in obtaining, by means of a willful false statement or representation, or by impersonation, or other fraudulent device, public assistance or benefits from other programs to which he is not entitled or who fails to comply with the provisions of §63.2-513 is guilty of larceny. (Code of Virginia §63.2-522).

With respect to receipt of assistance, fraud may consist of withholding information which would affect eligibility or assistance or the amount thereof as well as giving false information. In either case, the criterion is the intent of the action or failure to act. To determine that fraud exists, it must be established that the giving of false information was done with knowledge of its falsity or that the withholding of information which would affect eligibility for assistance or the amount thereof was deliberate with knowledge of its implications.

4.1. Responsibility of Local Department

In relation to fraud, the local department has the following specific responsibilities:

The agency must ensure that the individual receives a clear and full explanation of the eligibility requirements for the type of assistance being requested or received; of the responsibility to give complete and accurate information related to eligibility; and of the provisions of the law with respect to giving false

information knowingly or deliberately withholding information which would affect eligibility for assistance or the amount thereof.

When an individual provides incorrect information or withholds information which would affect eligibility for assistance or the amount thereof, it is the responsibility of the LDSS director to determine whether or not there is deliberate misrepresentation with intent to defraud, and to assure the methods of investigation do not infringe on the legal rights of persons involved and are consistent with the principles recognized as affording due process of law.

A determination as to whether fraud occurred must be based on a careful consideration of the particular circumstances. Among the factors to be considered in deciding whether there is a deliberate misrepresentation on the part of the individual are:

- whether the incorrect or unreported information affected eligibility
- the correct information was, in fact, known to the individual, and
- the individual fully understood the eligibility requirements and responsibility for reporting information, or

The LDSS director or designee has responsibility to cause a warrant or summons to be issued for every violation of which the director has knowledge. In discharging this responsibility, the LDSS director may seek the advice of the local Commonwealth's Attorney to determine whether a violation occurred. The LDSS director or designee is to act upon the advice of the Commonwealth's Attorney as to whether a charge of fraud is or is not justified by the evidence, but in the absence of such advice, the LDSS director or designee must decide whether the evidence requires a warrant or summons to be issued. The warrant or summons does not need to be signed by the LDSS director or designee personally but may be signed by the person having direct knowledge of the case and facts.

4.2. Recoupment

Section 63.2-512 of the Code of Virginia provides that any assistance or part thereof erroneously paid to an individual may be recovered as a debt. The amount erroneously paid may also be recovered from the income, assets or other property of the individual or from the public assistance payable to the individual.

5. **Improper Payments**

A payment made by a local department is improper when the following conditions exist:

- the payment is incorrect because:
 - the assistance unit does not meet eligibility requirements in the category
 - payment is in an amount greater than the amount to which entitled (overpayment)
 - payment is in an amount less than the amount to which entitled (underpayment);

AND

- the incorrect payment was made:
 - as an initial payment; or
 - later than the next possible month following the month in which the change affecting eligibility or the amount of payment occurred.

If there are both underpayments and overpayment, the agency must reconcile the amounts to determine if there is an underpayment or overpayment.

5.1. **Underpayment**

When it is learned that an underpayment has been made as a result of client error, there shall be no correction of underpayments made prior to the discovery of the error. When it is learned that an underpayment has been made as a result of agency error, including errors by other agencies, there must be correction of the prior underpayment by repayment to the individual as follows:

- the total allowable repayment to the individual shall be the amount of the underpayments.
- retroactive repayment of prior underpayments shall be made either in one lump sum payment or by monthly installment payments to the individual until the full allowable repayment is made. The method of payment is to be selected by the local agency.
- the retroactive corrective payment shall not be considered as income in determining need and the amount of the continuing

assistance payment for which the individual is eligible. The corrective payment shall be disregarded in determining resources for the month the payment is made and the following month.

The above instructions are not applicable when a corrective payment is made as a result of an appeal or a court decision. In such cases, the terms of the hearing decision or court order apply.

At the time a grant is made or increased for the purpose of correcting a prior underpayment, the individual must be informed in writing of the purpose of this special allowance, the amount and the period for which it will be made, and that it will automatically terminate at the end of the specified periods. If this is done and the individual at the time the special allowance is terminated, appeals within the advance notice period, assistance need not be continued in the original amount.

5.2. Overpayment

As provided for by the Code of Virginia §63.2-512, the local department must recover overpayments when:

- the improper payment is the result of an error on the part of the individual receiving AG; or
- assistance is continued due to an appeal and the hearing decision supports the agency action.

The methods from recovering overpayments are:

- **Overpayments other than Fraud**
 - when the individual receiving AG continues to be eligible, if the recipient has disregarded income, the monthly assistance payment is reduced by the amount of the monthly disregarded income until the full amount of the allowable recoupment is recovered.

If the individual has resources within the allowable reserves, the individual must be given the opportunity to repay by using such resources if so elected.

- When the individual is no longer eligible, arrangements for voluntary repayment of the full amount should be made. If the client fails to make voluntary repayment, the agency should initiate action under § 63.2-512 of the

Code of Virginia, to collect the amount as debt, unless the administrative cost of such action would exceed the amount of overpayment.

- **Fraud**

- When an individual is found guilty of fraud, repayment if ordered will be by the terms of the court order. If found not guilty the methods specified in the “Overpayments other than Fraud” section above are applicable.

In the operation of any program of public assistance in any locality, for which program appropriations are made to the Department of Social Services, it is provided that if a payment or overpayment is made to an ineligible individual therefore under State statutes and regulations, the amount of such payment or overpayment shall be returned to the Department of Social Services by the locality.

However, no such repayments may be required of the locality if the Department determines that such overpayment or payments to an individual resulted from the promulgation of vague or conflicting regulations by *DARS* or from the failure of either or Central office to make timely distribution to the localities of the statutes, rules, regulations, and policy decisions causing the overpayment or payments to be made by the locality. Further no such repayment will be required from situations where a locality exercised due diligence, yet received incomplete or incorrect information which caused the overpayment or payments.

The criteria used for determining if a locality exercised due diligence are:

- a redetermination was not outstanding (overdue) in the case in question unless:
 - the agency has received permission from the State to suspend reviews;
 - it can be shown that the error was the result of the individual willfully withholding information which would not have been discovered by verifications required at the time of the review; or
 - the error had not occurred at the time of scheduled review.
- the error was not the result of an anticipated change that was overlooked.
- the error was not the result of the client reporting a change that the agency failed to follow up on.
- the error was not the result of failure to use available management tools.

- the case record must be thoroughly documented regarding efforts to obtain information.

Overpayments and payments to ineligible individuals which shall be repaid to the State will begin with the month in which the change in money payment would have been effective if the individual had advised the agency of such change within the required time period and the agency had then taken appropriate action with the time limit specified.

Standards and procedures which were in effect at the time of the improper payment shall be used in determining the amount or repayment to be made. A standard or procedure is considered in effect in relation to a specific case after the date when:

- a standard or procedure has become effective by State Board action in all cases, or
- a standard or procedure has become effective in new and reviewed cases and the particular case is:
 - a new case,
 - a case in which a review is due, or
 - a case in which a change in circumstances has necessitate a partial review.

5.3. Identification of Improper Payment by State Agency

When an overpayment or payment to an ineligible individual has been identified by the State agency, a report is submitted promptly to the local department. Ten working days from the date the report was sent to the locality, is allowed for the agency to concur or register its exception to the findings with the DARS Central Office utilizing the concurrence memo. DARS Central Office will provide an opportunity for resolution of the differences and render decisions within 30 working days. The resulting decision is subject to appeal to DARS Central Office. However, only appeals in which the final decision was not made in accordance with established policy will be accepted.

Upon receipt of notice that a repayment is required, the local department must refund the overpayment following the guidelines established by the locality's finance department or unit. Adjustments are typically entered in the LASER system.

