



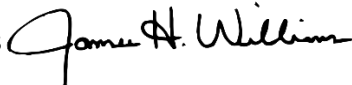
COMMONWEALTH of VIRGINIA
DEPARTMENT OF SOCIAL SERVICES
Office of the Commissioner

James Hunter Williams
Commissioner

November 22, 2024

MEMORANDUM

TO: Members, State Board of Social Services

FROM: James H. Williams 

REGULATION: 22VAC40-325, Fraud Reduction/Elimination Effort

ACTION: Notice of Intended Regulatory Action

The Fraud Reduction/Elimination Effort regulation provides the framework for a statewide fraud prevention, detection and investigation program. This regulatory action will begin the three-stage process to update the chapter. Proposed amendments will include changing the name of the program, and updating the allocation formula. I request that you approve the Notice of Intended Regulatory Action for publication in the *Virginia Register*, subject to approval by the Governor.

If you have questions concerning this requested action, please contact our Regulatory Coordinator, Karin Clark, by telephone at (804) 840-3679 or by e-mail at karin.clark@dss.virginia.gov. If possible, members are encouraged to submit their comments and questions by December 9, 2024.

JW:kc
Attachment



townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-325
Regulation title(s)	Fraud Reduction/Elimination Effort
Action title	Rename Program and Modify Local Reimbursement Formula
Date this document prepared	11/01/24

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

This regulatory change will rename the Fraud Reduction/Elimination Effort to the Statewide Fraud Control Program. It will also change the methodology used to reimburse local departments of social services. The current formula for reimbursement to local departments of social services for fraud control activities provides more weight to the size of a locality's caseloads for programs and less weight to actual fraud control activities taken or completed. This results in uneven reimbursement rates when compared to performance of desired outcomes, such as investigations initiated, claims established, or other similar actions. This regulatory action will reflect greater proportions for activities to investigate, establish overpayments of benefits and recovery of overpaid benefits.

Acronyms and Definitions

Please define all acronyms or technical definitions used in the Agency Background Document.

Fraud Reduction/Elimination Effort – FREE

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “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.”

The mandate for this regulatory change is a State Board of Social Services decision. Title 63.2-217 authorizes the Board to adopt regulations necessary to carry out Title 63.2. Title 63.2-526 authorizes the Board to adopt regulations to implement a statewide fraud control program.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’s overall regulatory authority.

Section 63.2-217 of the Code of Virginia grants authority to the State Board of Social Services to promulgate rules and regulations to operate assistance programs in Virginia. Section 63.2-526 of the Code of Virginia requires the State Board of Social Services to adopt regulations to implement a Statewide Fraud Control Program.

Purpose

Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

This regulation is essential to protecting the welfare of citizens, as fraud control activities ensure that assistance programs are implemented with integrity and equal access to benefits. Casual observation of the amounts for reimbursement for local departments of social services for fraud control activities shows that the larger localities, based on caseload sizes for programs, such as the Supplemental Nutrition Assistance Program or the Temporary Assistance for Needy Families Program, routinely receive sizable reimbursement amounts even though these departments may have minimal fraud control activities. In contrast, local departments of social services with smaller program caseloads often outperform larger departments in completing fraud control activities. This regulatory action alters the formula for reimbursement to reduce the weight allowed for caseload size.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

This regulatory action renames the fraud control efforts to the Statewide Fraud Control Program and eliminates all references to the Fraud Reduction/Elimination Effort. This action also eliminates the acronym FREE where it refers to fraud control efforts.

This action revises the formula used to calculate annual reimbursement to local departments of social services. Reimbursement will be based on a new formula of 33% completed investigations, 33% of the number of established claims for overpayments and 33% money collected from established claims. The current regulation allows 40% calculation for caseload size and 20% each for the other three elements.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

The changes to the program can only be achieved through regulatory action. It is the least burdensome and intrusive way in which to achieve the goals of the action. Small businesses are not affected by the changes proposed for renaming a fraud control program or for reformulating reimbursement to local departments of social services.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency.

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public Participation

Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation 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. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulation.

The State Board of Social Services is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the agency/board 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) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Susan Lloyd, susan.lloyd@dss.virginia.gov, Virginia Department of Social Services, Assurance Division, Fraud Management, 801 E. Main Street, Richmond, Va. 23229, 804.663.5526 and Fax 804.819.7185. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.