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Final Regulation Agency Background Document

Agency 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	June 15, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

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. The methodology for the allocation of funds to reimburse localities will be developed by a work group convened by the Commissioner. This work group will consist of local department representatives and senior department managers. 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.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The State Board of Social Services took final action on 22 VAC 40-325, Fraud Reduction/Elimination Effort on June 15, 2005.

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 numbers, 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.

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. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss 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.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" 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 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 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.

22 VAC 40-325-20C 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. It is the intent of Virginia Code §63.2-526 that localities are to incur no unreimbursed costs.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
10	Provides the definition of "Local share"	*Deleted from regulation	The program's enabling statute, §63.2-526, Code of Virginia specifies the program is to be funded from appropriated general funds, available federal funds and balances in the Fraud Recovery Special Fund. No provision is specified for a local share.
20 C	In order to receive full reimbursement of the local share of direct costs and supporting costs of operation...	*In order to receive full reimbursement of the local share of direct costs and support costs of operation...	Remove reference to local share of cost. Enabling statute does not provide for a local match.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment
Braxton Apperson, Director, Buckingham Co. DSS	Supports the proposed regulatory change as necessary to accomplish worthwhile goals. His ability to effectively support FREE is dependent on a reimbursement arrangement that is both adequate and dependable, a general fund line item for this purpose and federal/state reimbursement set at 80%. Also, accountability is proper and necessary, with user friendly reports capturing data actually used by the locality, Richmond and Washington, D.C.
S. E. Culpepper, Director of Human Services, City of Newport News	Suggests language be added to clarify that localities are not expected to pay a portion of administrative costs associated with the statewide fraud control program. In addition, include that the intent regarding whether additional funds will be sought from the general assembly be added. Also, representatives from the Virginia League of Social Services Executives (VLSSE) and the Benefits Programs Organization (BPRO) be included in work groups for developing a new methodology for reimbursing local departments of social services and for establishing performance expectations for local departments.
Bonnie DeHart, Eligibility Supervisor, Patrick Co. DSS	Local agency maintains no fraud investigator due to limited funding for the position. When staffed the investigator saved countless taxpayer dollars and helped ensure low income citizens received the benefits they were entitled to. Request 100% funding for small counties like Patrick.
Ben Owen, President	Needs to be clarification of whether the state expects to request funds from the general assembly for the fraud program and to what extent it can be expected.

<p>VA League of Social Services Executives</p>	<p>The work group convened by the Commissioner must include representatives from the Virginia League of Social Services Executives (VLSSE) and the Benefit Programs Organization (BPRO), as well as others who are knowledgeable and will contribute to the effort. A work group to develop performance standards for fraud investigators must include representatives from VLSSE and BPRO. Other assistance programs that contribute to fraud investigator’s workloads should be included in determining a locality’s appropriate staffing and funding. At local option, the State should retain funds otherwise allocated to agencies to be used to form state administered regional fraud units with full-time staff. These regional fraud units would investigate in localities that are not adequately funded to comply with the regulations.</p>
<p>Valerie C. Cuffee, Director, Arlington Co. DSS</p>	<p>Concurs with the comments made by Mr. Ben Owen, President of the Virginia League of Social Services Executives.</p>
<p>Carol A. Brunty, Director, Shenandoah Valley Social Services</p>	<p>The department is seeking a “local fraud worker mandate” without a clear funding plan. There should be no regulation changes which would mandate localities to have fraud workers unless sufficient dollars are available to reimburse the cost. Proposed action amounts to an unfunded mandate. Opposes the regulation change unless: general funds are provided to fund a portion of the cost, a funding formula or methodology is adopted and published before the regulation change and the funding formula should be uniform for all local agencies.</p>
<p>B. G. Holmes Farmville, VA</p>	<p>Provided suggestions for enhanced public assistance program management.</p>
<p>Daniel R. Foley, Chair, James City County Advisory Board</p>	<p>Encourages support of the regulation. He also is in agreement with the comments of Mr. Ben Owen, President of the Virginia League of social Services Executives.</p>
<p>Linda Nisbet, Director, Montgomery Co. DSS</p>	<p>State needs to provide funding, so that, with federal funds the program will be fully funded. Agrees with the redefined definition of Public Assistance to include all programs including child care.</p>
<p>Richard M. Verilla, Director, Campbell Co. DSS</p>	<p>Many agencies are unable to afford the cost of a fraud investigator, as overpayment recoveries are insufficient to cover the cost of the fraud program. Also, no credit is given for fraud prevention or collections in the Fuel, Medicaid or Childcare programs. Supports the proposed regulation and the establishment of the Commissioner’s work group to develop allocation of funds. Requests work group includes representatives of the Public Assistance Investigators of Virginia (PAIV).</p>
<p>Susan L. Clark, Director, Galax DSS</p>	<p>Language contained in the regulation is problematic. Current funding is inadequate. There is a lack of clarity as to the state’s ability to adequately fund and the impact on the locality. Adequate staffing is critical to performance with the fraud limit. Current underfunding and understaffing impacts program integrity.</p>
<p>A. Michael Hall, Director, Wythe Co. DSS</p>	<p>Concurs with the comments of Mr. Ben Owen, with the exception that he does not support the recommendation to form, at local option, state administered regional fraud units. Maintains that the state should adhere to Virginia State Code 63.2-526 which requires general funds to support the statewide fraud control program.</p>

<p>Aubrey O’Quinn, Fraud Investigator, Wythe Co. DSS</p>	<p>Concurs with the above comments of A. Michael Hall. Supports small agencies sharing a fraud investigator position, but does not support state administered fraud units.</p>
<p>Linda Boggs, Director, Giles Co. DSS</p>	<p>Giles County Board of Social Services is in agreement with the comments made on the proposed regulations by Mr. Ben Owen, President of the Virginia League of Social Services Executives. Recommends the state request an appropriation from the General Assembly to fully fund the FREE Program.</p>
<p>Linda Conwell, President, Public Assistance Investigators of Virginia (PAIV)</p>	<p>Emphasis of the legislature, Board of Social Services, the State Department of Social Services and local directors is on issuance of benefits and needed services. State is short-sighted on funding fraud control activities. Assumption is that a program can be funded through overpayment collections, so no general funds are appropriated. Asks that Commissioner’s work group for developing a reimbursement methodology include fraud staff from local agencies. Understaffing is occurring because staffing allocations are based on TANF and Food Stamp caseload only. Investigations are conducted in other programs, but are not considered when determining staffing allocations. Credit is not given to conducting (front-end) investigations of questionable applications. Recommends a centralized collection unit to pursue certain claims.</p>
<p>Sarah C. Snead, Director, Chesterfield- Colonial Heights DSS</p>	<p>In general concurs with the comments made by Mr. Ben Owen, Present of the League of Social Services Executives. Proposed regulation does not address specific methodologies and leaves many unanswered questions about potential costs to localities. Urges the inclusion of programs in addition to TANF and Food Stamps in the effort to preserve the integrity of the public trust.</p>
<p>M. Lou Toombs, Halifax Co. DSS</p>	<p>Has concerns regarding the formula used to determine funding and staffing needs for each locality. The formula considers only TANF and Food Stamp cases to determine staffing needs. Formula does not take into consideration other programs investigated for fraud, consequently her agency’s fraud unit is understaffed.</p>
<p>Caroline Jones, Fraud Investigator, Radford DSS</p>	<p>Regulation falls short of what is needed to safeguard the FREE program. Workgroups developing funding methodology and performance standards should include members from committees and organizations that are familiar with fraud investigation activity. State fraud management staff, local directors or finance managers should be included in the workgroup to develop funding methodology. Local representatives should be from agencies that maintain an active fraud program.</p>
<p>Sharon Payne, Eligibility Supervisor/Fraud Investigator, Shenandoah Valley DSS</p>	<p>Fully supports the fraud program. Program integrity is important, but investigations are not always cost effective. Other crime prevention and detection agencies are not expected to be self supporting. Fraud program should be funded and supported by the state; not through collections and local funding.</p>

Agency response: The Department concurs that the intent of Virginia Code §63.2-526, the statute establishing a statewide fraud program, is not to have localities incur any unreimbursed cost of the fraud program. Language in the final regulation omits references to “local share of costs.” The Department understands the need to revise §63.2-526 by removing language regarding local share of costs. The

Department requested general fund dollars in the 2005 legislative session to ensure, with anticipated collections and the federal match, sufficient funding for the program for the biennium. The funding was not included in the Governor’s budget. The Department, however, will continue pursuing general funds in the future. To the extent permitted by federal regulation, the Department is seeking funding from assistance programs other than TANF and Food Stamps.

Due to budget considerations, plus the relatively low level of overpayment collections by small local agencies, the Department will not consider establishing regional fraud investigator positions.

The final regulation states that a work group established by the Commissioner will convene to develop a methodology to reimburse localities. A recommendation will be made to the Commissioner to include in the work group representatives from the VLSSE, BPRO and PAIV, in addition to representatives from the Home Office and local directors or finance managers. The decision for inclusion will be made by the Commissioner. The composition of the work group will be at the discretion of the Commissioner.

Regarding enhanced program management practices, the Department will bring suggestions made by a commenter to the Fraud Advisory Committee for review.

All changes made in this regulatory action

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

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 and local share.
20		Refers to local fraud workers	<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>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>Reiterates that reimbursement for program costs shall be paid from available federal funds, appropriated general funds and balances in the Fraud Recovery Special Fund. There is no provision in the enabling statute for a local match.</p>
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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.