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Fast-Track Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-910
Regulation title(s)	General Provisions for Maintaining and Disclosing Confidential Information of Public Assistance, Child Support Enforcement, and Social Services Records
Action title	Update General Provisions for Confidential Information
Date this document prepared	February 14, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

This regulation governs the conditions under which social services and child support enforcement client records can be disclosed. The agency proposes simple amendments to the existing regulation, including: adding clarifying language; deleting provisions that refer to repealed regulations; and updating a reference to a regulation that was renumbered.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

n/a

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 22VAC40-910, General Provisions for Maintaining and Disclosing Confidential Information in Public Assistance, Child Support Enforcement and Social Services Records, on February 14, 2018.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

Section 63.2-217 of the *Code of Virginia* gives the State Board of Social Services the responsibility to make rules and regulations to carry out the purposes of social services programs. Sections §§ 63.2-102 through 63.2-105 pertain to confidentiality of public assistance and social services records and information.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation 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.

The language has been amended to delete or update references to regulations that have been repealed or renumbered. The goal of amending the regulation is to update it and clarify for the agency and the public.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

This regulatory action merely cleans up and streamlines the existing regulation. These are minor changes that will not alter the intent or requirements of the regulation. Therefore, it is not anticipated to be controversial.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

Amendments include: 1) removing a condition under which client information can be disclosed that is redundant and found elsewhere in the same regulation; 3) adding more clarification about when non-identifying statistical information about clients can be released; 4) deleting regulatory provisions under 910-90 (Confidential Client Information Pertaining to Child Support Enforcement) that refer back to repealed regulations; and 5) updating a reference to a regulation that was re-numbered.

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.

These changes pose no disadvantage to the public, agency or Commonwealth. Instead, the proposed changes to the wording will make the regulation easier to comprehend.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

Not applicable. These provisions are in accordance with existing state and federal law and regulations.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Not applicable.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no alternative methods to accomplishing the intent of the statute regarding use of confidential information. This regulation has no impact on small business.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

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	There no costs to the state.
Projected cost of the new regulations or changes to existing regulations on localities.	There are no costs to localities.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	The proposed amendments will impact the Virginia Department of Social Services, the 120 local departments of social services and citizens who receive benefits and services from these agencies and be the subject of confidential records.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	It is not known how many citizens would be impacted. The number of requests for confidential client data and the number of records released is not tracked centrally.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development	There are no projected costs.

<p>of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The primary benefit of the regulation is to having appropriate and confidential general provisions for maintaining and disclosing sensitive records.</p>

Alternatives

Please describe any viable 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. 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 regulation.

This is the least burdensome way that meets the essential purpose of the action.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

No comments received during the periodic review. The regulation continues to be necessary to protect the safety and welfare of citizens who may be the subject of confidential records addressed in the regulation.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of

parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The regulation ensures that confidential information is protected and released only according to federal and state laws and regulations. The regulation supports the privacy expectations of Virginians by strengthening the protection of confidential information in public assistance, child support enforcement, and social services records by compiling confidentiality provisions in one comprehensive regulation. It has no impact on family stability or economic self-sufficiency.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
20	n/a	Client records can be released without client consent for research purposes.	The provision to permit release of client records without client’s written performance for research purposes is being removed. The language is redundant with what is already stated in 22VAC40-910-50.
20	n/a	Permits nonidentifying statistical information to be released without client’s written permission.	Clarifies that such release is permitted when it’s “in accordance with state and federal law and regulations.”
90	n/a	Six conditions exist under which child support enforcement client information can be released.	All but one condition, release of health insurance information governed by 22VAC40-880-560, was repealed in 2016.
100	n/a	APS client records can be released to persons having a legitimate interest, in accordance with 22VAC40-740.	22VAC40-740 has been renumbered to 22VAC30-100. The citation is changed to 22VAC20-100-50.