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Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-295
Regulation title(s)	Temporary Assistance for Needy Families
Action title	Temporary Assistance for Needy Families Penalties for Spending Violations
Date this document prepared	August 17, 2016

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 of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

A new section is being added to 22VAC40-295, Section 40, Sanctions for Violating Spending Restrictions. Section 63.2-621 of the Code of Virginia limits the use of TANF benefits. TANF recipients shall not access TANF benefits through an electronic benefit transaction for the purchase of alcoholic beverages, tobacco products, lottery tickets, or sexually explicit visual materials or in any transaction in a Virginia Alcoholic Beverage Control store, an establishment in which pari-mutuel wagering or charitable gaming is conducted, an establishment in which tattooing or body-piercing is performed, or in any establishment that provides adult-oriented entertainment in which performers or other individuals connected with the business appear nude or partially nude. The amended regulation will provide penalties for TANF recipients who violate § 63.2-621. The first offense will result in the loss of TANF financial assistance for one month. The second offense will result in the loss of TANF financial assistance for three months. Subsequent offenses will result in the loss of TANF financial assistance for six months.

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.

TANF: Temporary Assistance for Needy Families" or "TANF" means the program administered by the Virginia Department of Social Services, under Title IV-A of the Social Security Act, through which a relative can receive monthly cash assistance for the support of his eligible children.

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 22VAC40-295, Temporary Assistance for Needy Families, on August 17, 2016'

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should 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's overall regulatory authority.

Pursuant to § 63.2-217 of the Code of Virginia, the State Board of Social Services has authority to promulgate rules and regulations necessary for operation of all assistance programs. The Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96) set for the initial spending restrictions for TANF. The General Assembly, however, enhanced the restrictions with the passage of House Bill 780 during the 2014 session which was codified at § 63.2-621. The purpose of this regulation is to identify the penalties to be imposed for violating the spending restrictions.

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 purpose of the proposed action is to amend the TANF regulation by adding penalties for persons violating spending restrictions. One of the main purposes of the TANF Program, as set forth in the authorizing federal statute, the Personal Responsibility and Work Opportunity Reconciliation Act (Public Law 104-193), is to "provide assistance to needy families so that children can be cared for in their own homes or in the homes of relatives." TANF benefits are intended to be used to insure that the needs of children are addressed in an effort to help them become productive citizens. TANF is not intended to provide assistance to enable a child's parent to purchase alcohol, gamble, get tattoos or other uses

restricted by § 63.2-621 of the Code of Virginia. The intent of the penalties set forth in this proposed regulation is to deter parents from using TANF for inappropriate purposes, thereby insuring the benefits are used for the subsistence needs of the child to promote the child's health, safety and welfare.

Substance

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

A new section has been added to the regulation. Recipients of TANF that violate the provisions of § 63.2-621 will be penalized with the progressive loss of benefits. The first offense will result in the loss of TANF financial assistance for one month. The second offense will result in the loss of TANF financial assistance for three months. Subsequent offenses will result in the loss of TANF financial assistance for six months.

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 primary advantage to the general public and the Commonwealth is that this regulation will provide a deterrent to misusing tax-payer funded public benefits. The advantage to the Commonwealth is ensuring the proper use of assistance which will result in more efficient use of funds and will ensure that funds are used as intended for providing necessities to poor families with children. There are no known disadvantages to the regulation.

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.

Section 4004 of the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96) requires states to "maintain policies and practices as necessary to prevent assistance provided under the State program funded with TANF from being used in "any electronic benefit transfer transaction in any liquor store; any casino, gambling casino, or gaming establishment; or any retail establishment which provides adult oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment." The federal statute is silent on the policies and practices the state puts into place to prevent electronic benefit transactions in these locations. The Commonwealth, through legislation, enhanced the spending restrictions. The federal statute also does not specify any types of penalties. Rather than implement an expensive electronic solution by putting a new card into use or requiring the reprogramming of automated teller machines and purchase of service devices around the state, the agency instead put the onus on recipients to properly use the TANF debit card. Part of this effort is imposing penalties that serve as a

deterrent to misuse of the TANF debit card. Without penalties, the small percentage of recipients that are inclined to misuse the TANF debit card will continue to do so.

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.

There are no localities in the Commonwealth that have a disproportionate impact from this 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 proposed regulation will have a positive impact on families receiving public assistance. Punishing the violators of the requirements of the Code of Virginia § 63.2-621 will create a disincentive to the improper use of TANF assistance. This ensures that TANF funds will be spent appropriately and that families and children are receiving the benefit of the assistance provided, rather than being spent on items that are non-essential to the well-being of a family. This regulation will not impact the rights of parents in education nurturing or supervision of their children. It may encourage economic self-sufficiency, as the funds will be used for daily subsistence needs of the children. The regulation has no impact on marital commitment. The regulation will decrease disposable family income if the family violates state law.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

No changes have been made since the proposed stage.

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. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

No comments were received.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
n/a	145	The current regulation does not include this requirement.	Penalties will be enforced for TANF recipients who violate § 63.2-621. The first offense will result in the loss of TANF financial assistance for one month. The second offense will result in the loss of TANF financial assistance for three months. Subsequent offenses will result in the loss of TANF financial assistance for six months. The amended regulation will create a disincentive to the improper use of TANF assistance.