



Virginia
Regulatory
Town Hall

Emergency Regulation
Agency Background Document

Agency Name:	Virginia Department of Social Services
VAC Chapter Number:	22 VAC 40-910
Regulation Title:	General Provisions for Maintaining and Disclosing Confidential Information of Public Assistance and Social Services Records
Action Title:	Establish New Regulation
Date:	February 20, 2002

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

Emergency Preamble

Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).

Please include a brief summary of the emergency action. There is no need to state each provision or amendment.

Senate Bill 1096 enacted during the 2001 session of the Virginia General Assembly, directs promulgation of an emergency regulation to be effective within 280 days. This regulation establishes separate sections for the confidentiality of public assistance and social services programs administered by the Department of Social Services and local departments of social services. Except as provided by federal and state law and regulation, no records or information concerning applicants for and recipients of public assistance are accessible except for purposes directly connected with the

administration of the public assistance program. Social services records and information are confidential except they are accessible to persons having a legitimate interest in accordance with federal and state law and regulation.

Basis

Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.

Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.

Pursuant to § 63.1-25 of the Code of Virginia, (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.1-25>), the State Board of Social Services has authority to promulgate rules and regulations necessary for the operation of public assistance and social services programs.

Substance

Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

Implementation of this regulation ensures that public assistance and social services confidential information will be protected and released only according to federal and state laws or regulations. The existing structure of confidentiality provisions does not effectively control information about individuals. There are a myriad of state laws and regulations pertaining to confidentiality of public assistance and social services information dispersed throughout the social services sections of the Code of Virginia and Virginia Administrative Code. Such a structure can result in the oversight of confidentiality requirements and the release of inappropriate identifiable personal information. This regulation establishes separate comprehensive sections for public assistance and social services confidentiality statutory and regulatory provisions. Separate comprehensive sections are necessary to ensure compliance of confidentiality requirements thereby affording greater protection of privacy to all Virginians.

Alternatives

Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.

Promulgation of this regulation establishes a section of general provisions that apply to the confidentiality of both public assistance and social services information. A new regulation is the least burdensome method to effect the new requirement. An alternative approach is to create two regulations. The first regulation would address the confidentiality of public assistance, and the second regulation would address the confidentiality social services programs. Two regulations would be burdensome and confusing. Two separate and identifiable regulations would require repetition of the general provision section and may lead to confusion.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the 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 planned regulation has a positive impact on the family. The regulation ensures that confidential information is protected and only released according to federal and state laws or regulations. The regulation supports Virginians expectation of privacy by affording greater protections of confidential information through compiling state and regulatory public assistance and social services confidentiality provisions into one comprehensive regulation.