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## Proposed Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	22VAC40-325
<b>Regulation title(s)</b>	Fraud Reduction/Elimination Effort
<b>Action title</b>	Amend Regulation to Accurately Reflect Reimbursement Practices for Local Fraud Activities
<b>Date this document prepared</b>	April 20, 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 (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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

Amendments are being proposed to the provision on local reimbursement of fraud activities to reflect the current practice. Beginning in state fiscal year 2014, the Department of Social Services (DSS) moved to a single funding-pool for all local administrative activities. As a result, the language in the current regulation does not accurately reflect the change in local funding allocations and reimbursements. Additionally, the funding methodology for the allocation to localities is being specified in the regulation.

## 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.*

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Acronyms:

FREE – Fraud Reduction and Elimination Effort

There are no definitions or technical terms used in the proposed regulation that are not contained in the definitions of the proposed regulation.

## 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.*

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Section 63.2-217 of the Code of Virginia gives the State Board of Social Services authority to promulgate regulations necessary to carry out § 63.2 of the Code. The Code of Virginia at § 63.2-526 sets forth the provisions for a Statewide Fraud Control Program. This section requires the State Board of Social Services to adopt regulations to implement the provisions of the section.

## 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.*

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The regulation relates to the administration of the Fraud Program by the state and local departments of social services. The revisions will more accurately define the local administrative allocation and reimbursement practices related to local fraud activities. Local fraud prevention and detection activities are paramount to ensuring public assistance programs serve only those actually in need of assistance and, therefore, by ensuring that limited funding is available only to those in need protects the health safety and welfare of Virginia’s citizens.

## 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.*

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The regulation section pertaining to local allocations and reimbursement of fraud activities is being amended to reflect current practices. Beginning in state fiscal year 2014, DSS moved to a single random moment sampling (RMS) funding pool for all local administrative activities, rather than two funding pools,

one for benefit programs and one for family services. As a result, reimbursement is made to local departments from the appropriation for Financial Assistance for Local Social Services Staff and Operations based on DSS' federally-approved cost allocation plan. RMS allows local departments to accurately document staff activities relating to reimbursable federal programs. RMS sampling is a recognized and accepted alternative to burdensome 100% time reporting. Language in the current regulation does not accurately reflect the change in local funding allocations and reimbursements.

The regulation is being amended to incorporate the specific methodology for the funding allocation. Each local department's allocation will be determined as follows: 40 percent on the local department's Temporary Assistance for Needy Families, Food Stamp, Energy Assistance and Child Care caseload; 60 percent on the number of completed investigations (20 percent), the number of established claims (20 percent) and the actual collections from established claims (20 percent.)

### 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 proposed regulation clarifies the current regulation to state the specific funding methodology used to allocate funds to local agencies. Additionally, the regulation will correct the statement that reimbursements to local agencies are based on the formula. In 2014, the Department changed its funding methodology for local social services staff to a single pool. As a result, reimbursement is made to local agencies based on the Department's federally approved cost allocation plan from funds appropriated for local social services staff and operations as set forth in the Appropriations Act. The primary advantage of the action to the public and local departments is having a clear regulatory base for the methodology that is consistent with practice. There are no disadvantages.

### 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.*

There are no proposed requirements that are more restrictive than applicable federal requirements. Federal requirements do not prescribe how states reimburse local departments for fraud related activities. The federal rules do require that the states submit a Cost Allocation Plan which defines how data is collected and calculated for allocation of expenses to the various federal programs administered by local departments. The plan must be approved by the federal government.

### 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.*

While all 120 local departments of social services are required to operate a fraud prevention and detection program, independently or in conjunction with another local department of social services, the proposed regulation does not impose any requirement that would disproportionately impact one locality or a group of localities.

### Public participation

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

In addition to any other comments, the State Board of Social Services is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is 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) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to] Toni Blue Washington, Assistant Director, Division of Benefit Programs, 801 East Main Street, Richmond VA 23219; Telephone: 804-726-7662; FAX: 804-726-7669; email address: [toni.washington@dss.virginia.gov](mailto:toni.washington@dss.virginia.gov). Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. 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 this stage of this regulatory action.

### 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.*

<b>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</b>	There is no projected cost to the state to implement the proposed regulation. The proposed regulation corrects a statement to accurately reflect the process for reimbursement for local social services staff and operations.
<b>Projected cost of the new regulations or changes to existing regulations on localities.</b>	There will be no cost to localities based on the implementation of the proposed regulation.
<b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b>	The impacted entities are local departments of social services. As previously indicated, the proposed regulation corrects language in the existing regulation related to the reimbursement to local social services agencies for conducting fraud activities.
<b>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</b>	The number of entities impacted by the proposed regulation will be less than 120 local departments of social services; some local departments contract their fraud prevention and detection

<p>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.</p>	<p>activities to another local department. No small businesses will be impacted by the proposed regulation.</p>
<p><b>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:</b>  a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and  b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There will be no new costs associated with the change proposed by this regulation. There will be no new of additional recordkeeping on the part of local departments of social services. There will be no costs related to the development of real estate for commercial or residential purposes.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>The benefits of the proposed regulation will be that the regulation accurately reflects DSS' process for allocating funds and reimbursing expenditures to local departments of social services for fraud activities and reflect current practice.</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.*

Statutory led to the initial promulgation of this regulation. An alternative to repeal the statute and operate by regulation only was not considered viable since the statute delineates requirements and the two complement each other. The proposed action is the least burdensome alternative to meet the purpose. The proposed action has no impact on small business.

### 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 reporting requirements so they cannot be less stringent. There are no schedules or deadlines included in the proposed regulation. The regulation reflects the current practice of DSS and

does not include compliance reporting requirements. The proposed regulation has no impact on small businesses.

### Periodic review and small business impact review report of findings

*If this NOIRA is the result of a periodic review/small business impact review, use this NOIRA 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.*

There were no comments received during the periodic review comment period. The regulation meets the requirements of Executive Order 17 (2014) and is clearly written and easily understandable. The action corrects language in the current regulation to reflect current practice and the regulation protects the safety, health and welfare of the citizens of the Commonwealth. The DSS considered the continued need for the regulation and determined the regulation is needed in order to carry out the intent of statute. No complaints have been received related to the current regulation. The regulation does not duplicate or overlap with any other state or federal law or regulation. The need for this change was identified during a periodic review of the regulation.

### Public comment

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

No comments received.

### 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.*

Maintaining program integrity in public assistance programs is essential to ensuring that the citizens of the Commonwealth know their tax dollars are adequately protected from abuse. The regulation will not strengthen or erode the rights of parents in the education, nurturing or supervision of their children but will hold them accountable for providing true and correct information if they depend on public assistance to feed, clothe or house their children. The regulation itself does not encourage or discourage economic self-sufficiency, but it does establish rules for investigating potential fraud for individuals receiving public assistance. The regulation has no impact on the marital commitment. The regulation could potentially

decrease disposable family income if the income received is from public assistance and is being obtained fraudulently.

**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 list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
20	n/a	Localities are reimbursed for their fraud activities based on the methodology established by a work group. The level of reimbursement of direct and support operation costs is paid from available federal and other funds.	<p>An allocation is made to localities based on the methodology established by a work group. Each local department is reimbursed for fraud-related expense through funds appropriated for local staff and operations.</p> <p>The regulation is being amended to incorporate the specific methodology for the funding allocation.</p> <p>The intent is to correct language to reflect current practice. There will likely be no impact from the promulgation of the proposed regulation.</p>