ACTION ITEM # 0 5

# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF SOCIAL SERVICES

*Office of the Commissioner*

Margaret Ross Schultze
COMMISSIONER

October 15, 2014

**MEMORANDUM**

**TO:** Members, State Board of Social Services

**FROM:** Margaret Ross Schultze

**REGULATION:** 22VAC40-325, Fraud Reduction/Elimination Effort

**ACTION:** Notice of Intended Regulatory Action

This regulatory action will amend 22VAC40-325, Fraud Reduction/Elimination Effort. I request that you approve the Notice of Intended Regulatory Action for publication in the Virginia Register, subject to approval under the provisions of Executive Order Number 17 (2014).

If you have questions concerning this requested regulatory action, please contact our regulatory coordinator, Karin Clark, by telephone at (804) 726-7017 or by e-mail at karin.clark@dss.virginia.gov.

MRS:kc

Attachment

Virginia
Regulatory
Town Hall

townhall.virginia.gov

# Notice of Intended Regulatory Action (NOIRA)
# Agency Background Document

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| **Agency name** | State Board of Social Services |
| **Virginia Administrative Code (VAC) citation** | 22VAC 40-325 |
| **Regulation title** | Fraud Reduction/Elimination Effort |
| **Action title** | Amend regulation to accurately reflect reimbursement practices for local fraud activities. |
| **Date this document prepared** | October 15, 2014 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

## Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

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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 clearly define local administrative reimbursement practices related to local fraud activities.

## 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.*

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§ 63.2-526 of the Code of Virginia, Statewide Fraud Control Program, requires the State Board of Social Services to adopt regulations to implement the provisions of that section.

## Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

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There is a continued need for the regulation as mandated by enacting statutory language. Prevention and investigation of fraudulent activities help ensure benefits are available to those truly in need of public assistance to protect health and welfare, and to reassure citizens that the agency is a good steward of their tax dollars.

## Substance

*Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

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The regulation sections pertaining to local reimbursement of fraud activities will be revised to reflect current practices. Beginning in state fiscal year 2014, the agency moved to s 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.

## Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

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Statutory requirements and a request by the Virginia Department of Social Services Budget Office 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.

## Public participation

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

*Please also indicate pursuant to your Public Participation Guidelines whether a panel will be appointed to assist in the development of the proposed regulation. Please state one of the following: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.*

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also 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) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation. A public hearing on this notice will not be held.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (**http://www.townhall.virginia.gov**), or by mail, email, or fax to Sandy Smith, Fraud Manager, 801 East Main Street, Richmond VA 23219; Telephone: 804-726-7679; FAX: 804-726-7669; email address: sandy.smith@dss.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period. A panel will not be appointed.

## Family impact

*Assess the potential impact of the proposed 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.

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

***If this NOIRA is not the result of a periodic review/small business impact review of the regulation, please delete this entire section.***

*If this NOIRA is the result of a periodic review/small business impact review, 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 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

*In addition, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, 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 the 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.*

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No comments were received during the periodic review public comment period. The regulation meets the criteria set out in Executive Order 17 (2014). There is a continued need for the regulation as mandated by the enacting statutory language. No complaints have been received. The regulation is clear, straightforward and easy to understand; however, changes need to be made to reflect current practices related to local administrative funding allocations. The regulation complements federal law and regulation. While the technology for predicting indicators for individuals who are likely to commit fraud improved, it does not preclude the need for this regulation; it supports the need to act on indicators of fraud.