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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>	22VAC40-920
<b>Regulation title(s)</b>	Appeals of Financial Recoveries for Local Departments of Social Services
<b>Action title</b>	Promulgation of New Regulation Regarding Appeals of Financial Sanctions
<b>Date this document prepared</b>	June 16, 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

This regulatory action will provide the local departments of social services the statutory right to appeal a financial recovery levied by the Virginia Department of Social Services (Department). While the Department provides local departments the ability to appeal a financial recovery in various guidance manuals, there is no current Department standard. A new regulation is the most efficient and effective way to incorporate all applicable requirements to achieve clarity and consistency.

## 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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CFR – Code of Federal Regulations

## 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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The State Board of Social Services (Board) has the authority to promulgate this regulation under §§ 63.2-217 of the *Code of Virginia*.

The *Code of Federal Regulations* states in 2 CFR 200.341 that the Department will provide the local department an opportunity to appeal an enforcement action to which the local department is entitled to under any statute or regulation. Currently, there is no statute or regulation that local departments are entitled to appeal an enforcement action.

## 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 Department needs to provide local departments the statutory right to appeal an enforcement action. A new regulation will provide clear, understandable requirements for local departments to decide on appealing an enforcement action and will best protect the health, safety and welfare of the citizens receiving services from the local department.

## 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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This new regulation will provide local departments the appeals process for any enforcement action taken by the Department. The new regulation will describe the appeals process specifically for a local department that has an enforcement action taken against it by the Department. Specifically, the new regulation:

- Defines a notification of a recovery.
- Provides a timeline of actions for the locality to appeal a recovery.
- Places the burden of proof on the local department of social services.

- Provides a timeline for action and approval of the Commissioner.
- Establishes the Commissioner's decision as final and binding.

### 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.*

This action poses no disadvantages to the public or the Commonwealth. The proposed regulation will bring Virginia into compliance with federal regulations affording a local department of social services a right to appeal financial recoveries applied by the Department.

### 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.*

The proposed regulation does not exceed applicable federal requirements.

### 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.*

No locality is disproportionately materially impacted by the proposed regulation. The proposed regulation affords all localities equal protection to appeal financial recoveries from the Department.

### 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 agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency 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 David Morrison 801 E Main Street, Richmond, VA 23219; (804) 726-7266 (office); (804) 726-7480 (fax); [david.morrison@dss.virginia.gov](mailto:david.morrison@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.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including:</b>  <b>a) fund source / fund detail; and</b>  <b>b) a delineation of one-time versus on-going expenditures</b></p>	<p>There is no additional cost to the state to implement and enforce this regulation. The monitoring of adherence to the regulation is a current responsibility of Department staff.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>There is no additional cost to localities to adhere to this regulation.</p>
<p><b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>This regulation will impact local departments of social services, with no other business or entity impacted by this proposed regulation.</p>
<p><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.</b> 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.</p>	<p>120 local departments of social services will be affected.</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>  <b>a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</b>  <b>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.</b></p>	<p>There will be no additional cost to businesses as a result of this regulation. Nor are there any costs related to the development of real estate.</p>
<p><b>Beneficial impact the regulation is designed</b></p>	<p>The proposed regulation will bring the Department</p>

<p>to produce.</p>	<p>into compliance with existing federal laws and clarify procedures and requirements for local departments of social services to appeal financial recoveries from the Department.</p>
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## 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.*

The following alternatives were considered: (1) make no request for a new regulation and retain the guidance process for appeals of enforcement action; and (2) promulgate a new comprehensive regulation for local departments to appeal enforcement actions.

Due to the variety of guidance manuals, reviews/audits, and reports, it was determined that promulgation of a comprehensive new regulation would be in the best interest of all affected by this regulation. A new regulation will provide clear, understandable requirements for local departments to decide on appealing an enforcement action and will best protect the health, safety and welfare of the citizens receiving services from the local department.

## 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 other regulatory methods that would accomplish the objectives of this regulatory action. The regulation is applicable to local departments of social services and does not have an adverse impact on small businesses.

## 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 were received for this proposed regulation during the 30-day NOIRA public comment period.

## 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.*

This proposal regulation has no impact on the institution of the family or family stability.

## 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.*

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
10	Defines the terms used in the proposed regulation.		The intent is to aid in understanding context and meaning of titles and acronyms.
20	Sets out deadlines for the local department to object to the recovery notice (15 days) and provide additional documentation (within 15 days of filing objection notice).		This section discusses the local department of social services responsibility and deadlines to notify the Commissioner of its intention to appeal a financial recovery and provide additional information for consideration by the Commissioner. The intent is for local departments to have clear understanding of expectations.
30	The local department loses the appeal right if it fails to meet the deadlines set out in section 20. Burden of proof is with the local department.		This section establishes that the local department loses its right to appeal if it does not appeal within the specified timeframes. The burden of proof falls upon the local department of social services. This section also establishes the rights of the local department to a hearing in the Richmond area and to be represented by counsel.

<p>40</p>	<p>The Commissioner provides a hearing opportunity and if the local department fails to show, the appeal right is forfeited unless rescheduled. Final decision is rendered within 60 days of the local department's filing of the objection.</p>		<p>If the local department fails to show for the hearing, the local department loses its right to further appeal, unless the Commissioner approves a request to reschedule.</p> <p>This section discusses the Commissioner's responsibilities to:</p> <ul style="list-style-type: none"> <li>• review all relevant information provided by the Department and local department and to</li> <li>• make a decision based on applicable regulations and policies. A final decision will be made within 60 days of local department's notice of appeal.</li> </ul> <p>The Commissioner's decision is final and not subject to judicial review.</p> <p>The local department is required to comply with the Commissioner's decision and execute any action items within the specified timeframes.</p> <p>The intent and likely impact for all sections of the proposed regulation is that local departments and the agency have clear understanding of expectations and timeframes.</p>
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