



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*

**Jason S. Miyares**  
Attorney General

202 North 9th Street  
Richmond, Virginia 23219  
804-786-2071  
FAX 804-786-1991  
Virginia Relay Services  
800-828-1120

MEMORANDUM

**TO:** KARIN CLARK  
Virginia Department of Social Services

**FROM:** Jennifer C. Williamson  
Senior Assistant Attorney General

**DATE:** July 21, 2023

**SUBJECT:** Exempt Final Stage Review of 22VAC40-675  
Updates to Personnel Policies for Local Departments of Social Services

You have asked the Office of the Attorney General to review the attached regulation and determine if the State Board of Social Services ("State Board") has the statutory authority to promulgate this regulation and if it comports with applicable state law.

Pursuant to Virginia Code § 63.2-217, the State Board is required to promulgate regulations as may be necessary or desirable to carry out the purposes of Title 63.2 of the Virginia Code. I have reviewed the attached regulation and it is my opinion the State Board has the authority to promulgate this regulation subject to compliance with the provisions of Executive Order 19, including the Procedures of the Office of Regulatory Management, and that in so doing the State Board does not exceed that authority.

This regulation is exempt from the procedures of Article 2 of the Virginia Administrative Process Act. Specifically, the changes proposed in sections 22VAC40-675-40, 22VAC40-675-180(C) and (D) and 22VAC40-675-190 are exempt pursuant to Virginia Code § 2.2-4006(a)(3) because they are for style, form, correction, syntax and intended to improve clarity.

The amendments to 22VAC40-675-180(A) are being made because the current list of protected classes is incomplete insofar as it does not comply with all federal law. Amending the language to require local departments of social services to comply with all federal, state and local laws, is broad language that brings the regulation into compliance with the following federal provisions that it does not currently comply with: 42 U.S.C. § 2000e-2 (EEOC Title VII) regarding sexual orientation and gender identity; 29C.F.R. §1630.4 (ADA) regarding disability status; 38 U.S.C. § 4311 (USERRA) regarding military status; and 42 U.S.C. § 2000ff *et seq.* (GINA) regarding genetics. Because the proposed changes are necessary to bring the regulation into compliance with these provisions of federal law, the amendment of subsection (A) is exempt from the procedures of Article 2 of the Virginia Administrative Process Act pursuant to Code § 2.2-4006(a)(4).

The removal of subsection (B) of 22VAC40-675-180 is also due to a change in federal law. In accordance with 41 C.F.R. § 60-1.5, federal law no longer requires local jurisdictions to develop and maintain a written affirmative action program. Accordingly, removal of this requirement is also an exempt action pursuant to Code § 2.2-4006(a)(4).

If you have any questions, please feel free to call me at 225-3197.

**Project 7381 - Final**

**Department of Social Services**

**Updates to Personnel Policies for Local Departments of Social Services**

**22VAC40-675-40. Inclusion in local jurisdiction personnel plans.**

A. It is the policy of the board to allow local department employees to be included in the approved local jurisdiction personnel plans instead of utilizing personnel policies outlined in the administrative manual.

B. Comprehensive jurisdiction plans shall meet merit system standards and be comparable to personnel policies included in the administrative manual. Specific personnel functions that must be included in local jurisdiction personnel plans are listed in the administrative manual.

C. Such plans must be documented to the satisfaction of the board.

D. The board must approve the inclusion of local department employees in a jurisdiction's personnel plan prior to inclusion the change(s) becoming effective.

**22VAC40-675-180. Equal employment opportunity.**

~~A. The board promotes equal employment opportunity in the recruitment and selection process by ensuring that qualification requirements are job-related and that such requirements do not limit or restrict employment opportunities because of race, color, religion, sex, age, disability, national origin, or political affiliation (except where sex or age is a bona fide occupational qualification).~~ and follows all applicable federal, state, and local non-discrimination laws.

~~B. All local departments shall prepare their own affirmative action plan in accordance with the administrative manual or comply with a written local jurisdiction plan that provides an aggressive, coherent management program for equal employment for all employees and applicants for employment.~~

~~C. Employees or applicants for employment who believe that they have been discriminated against may file a complaint with the Virginia Department of Human Resource Management, Office of Equal Employment Services, James Monroe Building, 101 North 14th Street, Richmond, Virginia 23219.~~ Equal Employment Opportunity Commission at their nearest local office.

~~D. All local departments are required to cooperate fully with the Office of Equal Employment Services~~ Equal Employment Opportunity Commission or any other official investigation of charges of discrimination. Cooperation includes providing papers, notes, documents, and any other written material and responding to questions deemed necessary to investigate the charge.

**22VAC40-675-190. ~~Policy, intent and purpose~~ Intent and scope of the standards of conduct.**

A. The intent of the standards of conduct is to protect the well-being of employees, assure safe and efficient operations and establish a fair and objective process for correcting ~~and treating~~ unacceptable conduct.

B. Standards of conduct shall be limited to employee conduct occurring at work or when otherwise representing the local department in a work-related capacity, unless otherwise specified in department policies and procedures.