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Fast-Track Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-675
Regulation title(s)	Personnel Policies for Local Departments of Social Services
Action title	Amend Personnel Policies Regulations
Date this document prepared	December 9, 2015

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The regulations provide personnel policies for local departments of social services and define options available to local boards of social services to deviate from State Board of Social Services policy and follow local jurisdiction policies. The regulations are being amended for consistency with current policy and law. Revisions were also made for the purpose of clarity and to correct grammatical errors.

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.

There are no undefined acronyms or technical terms used in the Agency Background Document.

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The State Board of Social Services took final action on 22VAC40-675, Personnel Policies for Local Departments of Social Services, on December 9, 2015.

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.

Section 63.2-217 of the Code provides the board the general authority for the development of regulations to carry out the purposes of Title 63.2. Section 63.2-219 gives the board authority to specify the requirements for local departments' personnel administration under Title 63.2.

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.

The amendments are necessary to make the requirements of the regulations consistent with the requirements of state law, accurate citation of federal law, and to make technical corrections. The regulations provide the personnel policies under which local departments of social services operate. Personnel policies that comply with state and federal law ensure appropriate oversight of local department employees who are providing vital services which protect the health, safety and welfare of citizens.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Executive Order 17 (2014) allows state agencies to use a fast-track rule making process to expedite regulatory changes that are expected to be non-controversial. The amendments to the regulations incorporate requirements of state law, cite federal law, and make technical corrections. As a result, no objections are anticipated.

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.

The changes are necessary to make the requirements of the regulations consistent with the requirements of state law, accurate citation of federal law, and to make technical corrections. There are no substantive changes.

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 advantage of this regulatory action to the agency and to the public is that it makes the requirements of the regulations consistent with the requirements of state law and clarifies the requirements for local boards and local departments. There are no disadvantages to the public or the Commonwealth.

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 changes do not contain any requirements that are more restrictive than 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 particularly affected by the proposed changes.

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 is not a viable alternative to amending the regulations. The proposed amendments are not expected to have any adverse impact on small businesses.

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>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</p>	<p>Implementation and enforcement of the amendments to the regulations will not result in any increased costs to the state.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>None</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>The amendments to the regulations will affect employees of local departments of social services.</p>
<p>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 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>There are 120 local departments of social services.</p>
<p>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: 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>Implementation and enforcement of the amended regulations will not result in any increased costs to the affected individuals, businesses, or other entities.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Increased ability to protect the health, safety and welfare of the public by having specific regulations that are consistent with the requirements of state law.</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.

The action incorporates the requirements of state statutes and clarifies existing requirements. There is no less intrusive or less costly alternative that achieves the purpose of the regulations.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form 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.

One public comment was received from Debra Riggs, Executive Director of the National Association of Social Workers-VA, suggesting adding language regarding Social Worker title protection. The agency responded that other regulatory action regarding social worker title protection had been taken and no further regulatory action was needed.

The regulations are necessary for the proper oversight of employees who protect public health, safety, and welfare and are clearly written and easily understandable. The agency determined that the need for the regulations continues and does not overlap, duplicate or conflict with federal or state law or regulation. The regulations were re-evaluated as part of this submission and it was determined that no changes in technology, economic conditions or other factors have changed in the areas affected by the regulations.

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.

The proposed changes will have no impact on the institution of the family and 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.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10		Specifies definitions	<p>Changed definition of “Deviate” to correct grammatical error. Added reference to the Administrative Manual to differentiate between the personnel policies a local board may adopt.</p> <p>Changed definition of “KSA” by adding clarifying language.</p> <p>Changed definition of “Local board” to clarify that the regulations apply to administrative versus advisory boards.</p> <p>Corrected grammatical errors in definition of “Local compensation plan.”</p> <p>Changed definition of “Local director” to clarify that it refers to the director of a local department of social services.</p>

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			Corrected definition of State classification plan” to reflect the use of pay bands and tiers as salary grades are no longer used.
20		<p>Specifies the requirements for local department designation</p> <p>Level assignment is based on authorized positions.</p>	<p>Removed letter “A” due to removal of subsection B.</p> <p>Changed “VI” to “III” to ensure consistency with changes made to the State Classification Plan.</p> <p>Removed the provision that level assignment is based on authorized positions to ensure consistency with changes made to the State Classification Plan. Added a provision that level assignment is based on occupational title of the local director, which is based on management structure and other specified factors.</p> <p>Removed subsection B to ensure consistency with current Administrative Manual policy.</p>
40		Specifies the requirements for inclusion in local jurisdiction personnel plans	Reworded subsection D to clarify what the State Board must approve relative to local jurisdiction personnel plans.
50		Specifies the requirements for adoption of specific policies of the local jurisdiction	<p>Reworded subsection A, to clarify that a local department may request approval to follow specific local jurisdiction policies instead of policies in the Administrative Manual. Added three categories to the list of policy options a local department may request on the Local Policy Request Form in order to provide a method for the LDSS to request deviation in these areas. They are: classification and/or compensation; affirmative action; and political activity.</p> <p>Removed subsection B due to the above additions to A and re-lettered remaining sections.</p> <p>In the new subsection B, added the words “or more” to clarify that the local department may exercise more</p>

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			<p>than one option and the words “and the deviation request shall be presented to the board for action” to clarify that a request for deviation to these policy areas must be made to the board.</p> <p>In the new subsection C, clarified that the local department must notify the department by submitting an updated Human Resources Policy Record form when a local department desires to revert back to one or more State Board personnel policies.</p>
90		Specifies the requirements of the local compensation plan, local position actions, and local compensation policies and practices.	In subsection A, added language to clarify that a request to modify salary ranges that are within the state minimum and maximum rates does not constitute a deviation. In subsection E, corrected the Fair Labor Standards Act citation to include all sections of the act.
100		Specifies salary reimbursement requirements.	<p>For the purpose of clarity, subsection B was split into two subsections (B and D) and the remaining subsections were re-lettered.</p> <p>A new subsection C was added to allow for other types of compensation that are set forth in the Administrative Manual and approved by the board but not specifically mentioned in the regulations.</p> <p>The word “state” was added before “occupational title” in subsection B and “position occupational title” in the new subsection D for clarity.</p> <p>Language was added to subsection D to clarify that available and appropriate federal funds may be used to compensate for overtime.</p>
110		Specifies the requirements for deviations from state classification or compensation plans	<p>Reworded subsection A to clarify that a request for deviation must be made to the board.</p> <p>In subsection B, added language regarding the required classification</p>

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			and/or compensation review process for consistency with other sections. In subsection C, changed “state classification plan and compensation plans” to “state classification, classification and compensation, or compensation plan” for consistency with wording in the other subsections.
120		Specifies the requirements for sanctions	<p>Changed title of section from “Sanctions” to “Reviews” for consistency with other section changes.</p> <p>Added “Personnel” before “policies” in subsection A to clarify the policies to which the section will apply. Removed “or audit” to specify the action that may be taken by the agency regarding personnel policies and actions.</p> <p>In subsection B, struck the words “but not be limited to” for the purpose of clearly defining what may be included in a review.</p> <p>Removed subsection C regarding financial sanctions. Financial sanctions and an appeals process will be addressed in new regulation.</p>
130		Specifies the requirements for general hiring provisions	<p>In subsection A, changed “selecting” and “advancing” to “selection” and “advancement of” to provide clarity.</p> <p>Removed “the” from the federal equal employment opportunity to provide clarity.</p> <p>Added “local department” to subsection D, for clarity.</p>
140		Specifies the requirements for employee status in the merit system plan.	Removed “nonprobationary” and added the word “regular” in subsection B, to ensure consistency with the Administrative Manual.
180		Specifies the requirements for equal employment opportunity	In subsection D, removed “when they are conducting” and added “or any other” to clarify requirement to comply with all official investigations, regardless of the investigating body.

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			<p>Changed “investigations” to “investigation” for grammatical correctness.</p> <p>Removed “by that office” to clarify requirement to comply with all official investigations, regardless of the investigating body.</p>
200		Specifies the requirements for the employee grievance procedure	<p>Removed the provision allowing local departments not included in their jurisdiction’s grievance procedure to develop their own to ensure consistency with Code of Virginia §63.2-219.</p> <p>Added a provision for a local department to adopt a grievance procedure that is either (i) adopted by the locality in which the local department or local board is located, or in the case of a regional department or board, the grievance procedure adopted by one of its localities in the regional organization; or (ii) approved by the state board. This will ensure consistency with grievance procedure options provided to local departments or local boards in Code, §63.2-219.</p> <p>Removed “This” and added “The board approved” and “in the Administrative Manual” to provide clarity.</p> <p>Changed Chapter “10” to Chapter “30” to ensure correct Code citation for grievance procedure provisions as referenced in Code, §§ 2.2-3000 et seq. and 63.2-219.</p> <p>Changed “2.2-1000” to “2.2-3000” to ensure correct Code citation for grievance procedure provisions as referenced in Code, §§ 2.2-3003 et seq. and 63.2-219.</p> <p>Added a provision to clarify that the grievance procedure adopted by the local department or board must apply to employees, including local</p>

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			directors, of the local boards and local departments, to ensure consistency in Code, § 63.2-219.
210		Specifies the requirements for political activity	<p>In subsection A, added “public” and “or position” for clarity. Removed “partisan” for consistency with Hatch Act, per 5 USC §§1501-1508.</p> <p>In subsection B, removed “are” and added “shall be” to provide clarity. Corrected citation to the Hatch Act.</p> <p>In subsection D, clarified the roles of the state board and local departments in adopting political activity provisions and added language regarding the required review and approval process for consistency with other sections.</p>
220		Specifies the requirements for outside employment of local department	<p>In subsection A, amended the reference to work performance for clarity. Made grammatical corrections to the Code reference.</p> <p>In subsection B, added language clarifying that approval of requests by the local director to seek or be engaged in outside employment must be obtained from the local board or, in the case of local directors serving as the local board, from the elected governing body or designee.</p> <p>In subsection C, replaced “agency” with “local department” to ensure consistency in Code references to local departments.</p>
9998		Specifies required forms	The forms were updated to include a signature for VDSS HR review, indication of State Board approval, and revised form numbers. A new Classification and Compensation Self-Analysis Form was added to the list of forms. Underlines indicate new and revised forms and the required hyperlinks.
9999		Specifies documents incorporated by reference	Updated Administrative Manual revision date.

