



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: Karin Clark
Virginia Department of Social Services

FROM: Jennifer C. Williamson
Senior Assistant Attorney General

DATE: April 16, 2018

SUBJECT: Emergency Regulation State Response When A Local Department of Social Services Fails To Provide Services; 22VAC40-677

I am in receipt of the attached emergency regulation. You have asked the Office of the Attorney General to review and determine if the State Board of Social Services ("the Board") has the statutory authority to promulgate the specified emergency regulation and whether the specified emergency regulation comports with applicable state law. The authority for this emergency action is found in Virginia Code § 2.2-4011(A), which provides that regulations that an agency finds are necessitated by an emergency situation may be adopted by an agency upon consultation with the Attorney General, which approval shall be granted only after the agency has submitted a request stating in writing the nature of the emergency, and the necessity for such action shall be at the sole discretion of the Governor. The Board has submitted its statement of the nature of the emergency and necessity for such action in the "Agency Background Document."

Pursuant to Va. Code § 63.2-217, the Board is required to promulgate regulations as may be necessary or desirable to carry out the purposes of Title 63.2 of the Code of Virginia. It is my opinion that the Board has the authority to promulgate this emergency regulation and the Board does not exceed that authority if it complies with Executive Orders 17 (2014) and 58 (1999) and the provisions of Article 2 of the Administrative Process Act, including obtaining the Governor's approval that promulgation of the emergency regulation is necessary.

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

Attachment

DEPARTMENT OF SOCIAL SERVICES

State Oversight of Local Departments of Social Services

CHAPTER 677

STATE RESPONSE WHEN A LOCAL DEPARTMENT OF SOCIAL SERVICES FAILS TO
PROVIDE SERVICES

**22VAC40-675-677. State Response to When A Local Department of Social Services Fails
To Provide Services**

A. Each county and city must provide public assistance and social services in accordance with the provisions of Subtitles II and III of Title 63.2 of the Code of Virginia. If any county or city, through its appropriate authorities or officers fails, refuses, or is unable to provide public assistance or social services in accordance with the Code of Virginia, and with appropriate proceedings by the Board as directed by Code § 63.2-408, the Commissioner shall have the authority to direct and oversee all programs set forth in Subtitles II and III for that particular county or city, including provide for the payment of public assistance and expenditures for social services and administration.

B. The Commissioner may also withhold from any county or city the entire reimbursement for administrative expenditures or any part thereof for the period of time such locality fails to operate public assistance programs or social service programs in accordance with state laws and regulations or fails to provide the necessary staff for the implementation of such programs.

C. The Commissioner shall at the end of each month file with the State Comptroller and with the local governing body of such county or city a statement showing all disbursements and expenditures, including administrative expenditures, made for and on behalf of such county or city, and the Comptroller shall from time to time as such funds become available deduct from funds appropriated by the Commonwealth, in excess of requirements of the Constitution of Virginia, for distribution to such county or city amounts required to reimburse the Commonwealth for expenditures incurred under the provisions of this section.

D. In consultation with the county or city, the Commissioner shall develop a transition plan that sets the conditions under which the responsibility to direct and oversee the programs is transferred back to the county or city.

E. The Commissioner shall report quarterly to the State Board and to the local board on the status of services and expenditures in the city or county as well as the progress toward developing and meeting the conditions of the transition plan.