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Final Regulation Agency Background Document

Agency name	Virginia Department of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-675
Regulation title	Personnel Policies for Local Departments of Social Services
Action title	Establishment of Proposed Regulation
Document preparation date	August 20, 2003

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

This regulation was originally presented in its proposed state in August of 2002. Due to the large number of comments received, the regulation was revised and re-proposed. A 30-day comment period on the re-proposed regulation was held from May 19, 2003 through June 18, 2003. The regulation formalizes a consistent, appropriate and uniform structure for the development of a personnel system for local departments of social services in Virginia.

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.

On August 20, 2003, the State Board of Social Services adopted regulation 22 VAC 40-675, Personnel Policies for Local Department of Social Services.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

If the final text differs from the text at the proposed stage, please indicate whether the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

Section 63.2-217 provides the general authority for the State Board of Social Services to adopt regulations necessary for the administration of social services programs under Title 63.2 of the Code of Virginia . Section 63.2-219 requires the State Board of Social Services to “. . . adopt regulations to maintain such education, professional and training requirements and performance standards, including such regulations as may be embraced in the development of a system of personnel administration meeting requirements of the Department of Health and Human Services under appropriate federal legislation relating to programs administered by the Board. . . .”

This regulation provides the minimum requirements necessary to ensure the personnel system used to administer Title 63.2 of the Code of Virginia meets state and federal requirements.

The Federal Standards for a Merit System of Personnel Administration, Section (5 CFR, Part 900, subpart F, (b)) states that certain federal grant programs require, as a condition of eligibility, that State and local agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. The regulation addresses and fulfills the requirement of establishing a merit personnel system.

The Office of the Attorney General has certified that the State Board of Social Services has the statutory authority to promulgate this regulation and that this regulation comports with applicable state law.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it 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 regulation satisfies the legal requirement that the State Board of Social Services adopt regulations to establish a merit personnel system. The regulation details the options local departments of social services have in the administration of local personnel systems to ensure fairness and consistency in treatment of employees and potential employees. Consistency in personnel policies across local departments strengthens the social service network and provides a workforce that is better equipped to protect the health, safety and welfare of the citizens of the Commonwealth. The goal of this proposed action is to provide and formalize a consistent, appropriate, structure that ensures the welfare of employees and potential employees in local departments of social services.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

This regulation provides an additional legal basis for policies and practices in local departments of social services. Many of the policies are required as a condition for continued receipt of federal grants. The proposed regulation includes the following topics: classification and compensation; recruitment and selection; employee status and benefits; employee performance evaluation; equal employment opportunity; standards of conduct; grievance procedures; and other employee relations practices.

The regulation proposed in August contained details similar to those in the policy manual the Department developed for guidance for the local departments. After receiving a large number of comments critical of the level of detail, the Department reviewed the proposed regulation using a workgroup composed of local and state staff and decided to revise and resubmit the regulation at the proposed stage of the regulatory process. The regulation has been reduced to the minimum necessary to meet federal and state requirements and the needs of the local departments of social services. Detailed guidance will be provided to local departments in policy manuals.

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 regulation will help ensure uniform and equitable practices in the 121 local departments of social services in the Commonwealth. This regulation will support a qualified, representative workforce, factors strongly associated with effective provision of services to local citizens. There are no known disadvantages to this regulation.

Changes made since the re-proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
22 VAC 40-675-10.		“[State Classification Plan classification plan]” “[State Compensation Plan compensation plan]”	Proper use of capitalization.
22 VAC 40-675-50.		[form Form];	Proper use of capitalization.
22 VAC 40-675-60.		Section Identifier: [State Classification Plan classification plan]. Within paragraph: [State Classification Plan state classification plan].	Proper use of capitalization.
22 VAC 40-675-70		[State Classification Plan state classification plan].	Proper use of capitalization.
22 VAC 40-675-80		Section Identifier: [State Compensation Plan compensation plan]. Within paragraph: [State Compensation Plan state compensation plan].	Proper use of capitalization.
22 VAC 40-675-90		[State Compensation Plan state compensation plan].	Proper use of capitalization.

Section number	Requirment at proposed stage	What has changed	Rationale for change
22 VAC 40-675-90.		A local compensation plan shall include policies and procedures for awarding salary increments, [conversion,] merit increases, special compensation for child and adult protective service work, employee or position status changes, and any other type of approved increases. Salary determinations shall be rendered in a fair and consistent manner to ensure equal pay for equal work.	Local departments are not required to include conversion information.
22 VAC 40-675-110.		“ [State Classification or Compensation Plans state classification or compensation plans] ”	Proper use of capitalization.
22 VAC 40-675-120.		B. Reviews may include but not be limited to the assessment and analysis of personnel data, records, reports, systems[,] and feedback from local department employees.	Proper use of comma.
22 VAC 40-675-130		B. The department shall determine the application process and employment forms to be used by all applicants for original appointment, promotion, demotion, transfer[,] and reemployment.	Proper use of comma.
22 VAC 40-675-140		B. The types of employee status included in the merit system plan are probationary, nonprobationary, restricted, temporary[,] and emergency.	Proper use of comma.
22 VAC 40-675-200.		Local departments not included in their jurisdiction’s grievance procedure shall develop their own in accordance with the Administrative Manual. This grievance [<u>procedure</u>] shall be consistent with the provisions of Chapter 10 (§2.2-1000 et seq.) of the Code of Virginia.	Missing word. Insert the word “procedure”.

Section number	Requirment at proposed stage	What has changed	Rationale for change
22 VAC 40-675- 210.		Directly or indirectly coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a [part party], committee, organization, agency or person for political purposes; or	Spelling correction. The word “part” should read party.
22 VAC 40-675- 220		If an employee accepts employment outside the [agency local department] without receiving prior approval, the employee will be subject to disciplinary action under the Standards of Conduct.	Noun correction. Change “agency” to local department.
Docum ents Incorpo rated by Referen ce		[Local Agency Compensation Plan, Department of Human Resource Management, revised December 1, 2000.]	The above statement is referencing the state compensation plan. The state compensation plan is the department’s pay plan, which provides local departments a basis to develop local compensation plans. The details of the plan are included in the Administrative Manual, which is published by the Virginia Department of Social Services.

Public comment

Please summarize all public comment received during the 60-day period following the publication of the proposed stage, and provide the agency response. If no public comment was received, please so indicate.

Commenter	Comment	Agency response
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Commenter	Comment	Agency response
<p>Ben Owen, President, VLSSE</p>	<p>On behalf of the Virginia League of Social Services Executives, I would like to make this most positive comment on the above referenced regulation in its re-proposed form. The changes we sought with the original regulation have been accommodated and the policies which will follow this regulation will serve as tools for local DSS agencies to be effective in administering personnel practices. Thank you for the opportunity to participate in the process of adopting this regulation.</p>	<p>Comment supports re-proposed regulation. No action required.</p>
<p>Martha Hall, Chair, VLSSE Personnel Committee</p>	<p>The repropsoed regulation governing Personnel Policies for Local Departments of Social Services successfully addresses all of the issues and problems identified when the regulation was first published for comment in July 2002. Thank you and the other staff who worked so long and so hard to bring us a regulation in the true sense--the promulgation of this regulation will allow for the drafting of a human resources manual which will provide real guidance and direction to local agencies as they grapple with the always challenging issues of personnel management. The League Personnel Committee supports the repropsoed regulation as submitted.</p>	<p>Comment supports re-proposed regulation. No action required.</p>
<p>Betty Wells, Director, Halifax County DSS</p>	<p>On behalf of Halifax County DSS, I am writing to thank you for your help in re-writing this regulation and to wholeheartedly support the re-write. Thanks Again!</p>	<p>Comment supports re-proposed regulation. No action required.</p>

Commenter	Comment	Agency response
Betty McCrary, Director, Roanoke County DSS	How will this impact local departments who are "deviating agencies" - those under the local gov't. for class, compensation and personnel issues? Such as Roanoke Co. Roanoke City, Henrico, etc.	This regulation will not change any current policies and practices that apply to deviating agencies.
Sharon Fisher, Director, Northumberland DSS	The re-proposed personnel regulation initially published for comment on July 15, 2002, successfully addresses the many concerns raised by the initial version which would have made it so much more difficult for local agencies to deal with personnel issues and subsequent needed changes. The work done by the re-write committee, led by you and others in the Division of Human Resources Management has successfully addressed those issues and has been a demonstration of an excellent collaborative effort between state and local staff. Thank you and the other staff so very much for your dedication, hard work, and quality product.	Comment supports re-proposed regulation. No action required.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

This is a new regulation.

Section number	Proposed new section number if applicable	Current requirement	Proposed change and rationale

Section number	Proposed new section number if applicable	Current requirement	Proposed change and rationale
22 VAC 40-675-10.			<p>The definitions for “Commission”, “Compensation Schedule and Plan”, “DSS’ DHRM”, “Local Hiring Authority”, “Local Jurisdiction”, On-call”, “Recruitment Announcement”, “Recruitment Announcement Period,” Referral List, State Board, and WCA were deleted. Definitions for “Board”, “Deviate” and “Salary Range” were added. Definitions for “Class”, “Commissioner”, “Local Board”, “Local Department”, “Local Director”, and “Statewide Classification Plan” were modified.</p> <p>Technical changes as a result of the recodification of Title 63.1 to Title 63.2. Consistent use of terminology throughout the regulation.</p>
22 VAC 40-675-20.			<p>Level designation and caseload level were deleted.</p> <p>Caseload is not used to determine local agency level designation.</p>
22 VAC 40-675-30 through 22 VAC 40-675-60.			<p>22 VAC 40-675-30 through 22 VAC 40-675-60 were reorganized to clarify Board, Department and Local Departments of Social of Services roles and responsibilities and options.</p> <p>Clarification of roles and responsibilities.</p> <p>The option for agencies to deviate in grievance procedures was deleted.</p> <p>To comply with the Code of Virginia.</p>

Section number	Proposed new section number if applicable	Current requirement	Proposed change and rationale
22 VAC 40-675-70 through 220.			<p>Changes removed procedural and policy details, and added a reference to adult protective services and language addressing bonuses for employees of local department. The title of Part II I has been changed to State Classification and Compensation and now includes sections 22 VAC-675-60 through 120.</p> <p>Changed to clarify the Board and Department roles and responsibilities.</p> <p>Procedural details are covered in the Administrative Manual for Local Departments of Social Services.</p> <p>Reference to adult protective services added to comply with recent changes to the Code of Virginia.</p> <p>Bonus information added to provide citing of appropriate section of the Code of Virginia that addresses bonuses for employees of local department.</p>
22 VAC 40-675-230 through 260.			<p>Extensive procedural details were removed. A requirement for local practices to meet specific merit principles was added. Part III has been changed to “Recruitment and Selection of Local Department Employees” and now includes 22 VAC-675-130.</p> <p>Procedural details are covered in the Administrative Manual for Local Departments of Social Services. Federal requirement was added to communicate legal obligation.</p>

Section number	Proposed new section number if applicable	Current requirement	Proposed change and rationale
22 VAC 40-675-270 through 320.			<p>Extensive procedural details were removed. Part IV now covers types of employees, a requirement for reimbursements to be in accordance with Department policies and procedures, and termination or separation from service. This part now includes sections 22 VAC-675-140 through 160.</p> <p>Procedural details are covered in the Administrative Manual for Local Departments of Social Services. To clarify local department responsibility to comply with applicable agency policies and procedures for reimbursements.</p>
22 VAC 40-675-330 through 360.			<p>Procedural details have been removed. Part V now includes only 22 VAC 40-674-170 which addresses performance evaluation of the local directors and the local directors responsibilities for evaluation of local employees.</p> <p>Procedural details are covered in the Administrative Manual for Local Departments of Social Services.</p>
22 VAC 40-675-370.			<p>Details on the preparation of Affirmative Action Plans were deleted. Part VI. is comprised of 22 VAC 40-675-180 and covers the Board’s promotion of equal opportunity in the recruitment and selection process. It also requires local departments to file affirmative action plans, provides recourse for employees or applicants who believe they have been discriminated against and requires that local departments cooperate in investigations.</p> <p>Procedural details are covered in the Administrative Manual for Local Departments of Social Services.</p>

Section number	Proposed new section number if applicable	Current requirement	Proposed change and rationale
22 VAC 40-675-380 through 440.			<p>Excessive policy and procedural details were removed. The grievance procedure was removed and now is included Part VIII section 22 VAC 40-675-200. Part VII now contains 22 VAC 40-675 and covers the intent and application of the standards of conduct.</p> <p>Procedural details are covered in the Administrative Manual for Local Departments of Social Services.</p>
22 VAC 40-675-450.			<p>Procedural details were removed. This information is now contained in Part IX. Part VIII was renamed to “Grievance Procedure” and contains only section 22 VAC 40-675-200.</p> <p>Procedural details are covered in the Administrative Manual for Local Departments of Social Services.</p> <p>For clarification and subject continuity.</p>
22 VAC 40-675-450.			<p>Part IX is new. The title is “Other Employee Relations Policies”. This part now includes 22 VAC 40-675-210 through 220. This information was formerly included in Part VIII and covers political activity and outside employment. For clarification and subject continuity.</p>

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

This regulation affects the citizens of the Commonwealth of Virginia and individuals who either are recipients of social services or applicants seeking employment. The regulation strengthens the effective and consistent delivery of services to the public through qualified staff. Services that are provided encourage economic self-sufficiency and family stability.