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Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-920
Regulation title(s)	Appeals of Financial Recoveries for Local Departments of Social Services
Action title	Promulgation of New Regulation Regarding the Appeals of Financial Sanctions
Date this document prepared	August 15, 2018

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 of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 sanction levied by the Virginia Department of Social Services (Department). While the Department provides local departments the ability to appeal a sanction 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.

The State Board of Social Services initially adopted the final regulation on June 14, 2017. Additional changes are being made in response to executive review.

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.

CFR – Code of Federal Regulations
Department – Virginia Department of Social Services

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 approved final action on 22VAC40-920, Appeals of Financial Recoveries for Local Departments of Social Services, on August 15, 2018.

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.

The State Board of Social Services 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.

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.

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 “disallowed costs,” “notification of recovery,” and “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 final 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.

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 final regulation does not impact the institution of the family or family stability.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
10	N/A	Added definitions for the following – “Disallowed Costs” “Recovery”	Added to clarify meaning of language used in regulation.
20 A 1	Within 15 calendar days of issuance of a notification of a recovery, provide written notice to the commissioner of its objection to the recovery;	Changed from “15 calendar days” to “21 calendar days”	Changed to provide the local department adequate time to prepare for appeal.
20 A 2	Within 15 calendar days of filing its notice of objection with the commissioner, submit all relevant additional information, documentation, or other pertinent data to the commissioner supporting its appeal of the recovery, termination action, or the disallowed costs.	Changed from “15 calendar days” to “21 calendar days.” Deleted “termination action.”	Changed to provide the local department adequate time to prepare for appeal. Deleted as this term is not consistent with the type of Department reviews and audits that may lead to a recovery.
40 A	The commissioner shall provide an opportunity for a hearing, reasonable notice of which shall be given in writing to the local department. All hearings and meetings related to appeals shall be held in the	Changed to require the commissioner to provide an opportunity for a hearing at a time, date, location, and manner to be determined by the commissioner. Written notice of hearing will be provided to the local	Changed to provide flexibility for the commissioner and local department to hold a hearing based on the specific needs of each unique situation.

	Richmond, Virginia area.	department at least five calendar days before the hearing.	
40 B	The commissioner is to issue a final decision within 60 days following the date the local department filed its objection with the commissioner.	Added “calendar” prior to “days.”	Added to clarify the number of days. Other sections clearly delineate the time period to be calendar days.
40 D	The local department will implement the decision within 30 days of the date of the final decision.	Added “calendar” prior to “days.”	Added to clarify the number of days. Other sections clearly delineate the time period to be calendar days.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

No comments were received during the public comment period.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the 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		This section establishes that the local department loses its

<p>40</p>	<p>meet the deadlines set out in section 20. Burden of proof is with the local department.</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>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. 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 addresses the Commissioner's responsibilities to:</p> <ul style="list-style-type: none"> • review all relevant information provided by the Department and local department and • 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. <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> <p>The term "calendar" was added following publication of the proposed, for clarity.</p>
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