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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-677
Regulation title(s)	State Response When A Local Department of Social Services Fails To Provide Services
Action title	Establish Regulation for State Oversight of Local Departments of Social Services
Date this document prepared	April 18, 2018

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to eighteen months), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation. 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The proposed new regulation will provide the Department of Social Services Commissioner with regulatory authority to direct and oversee the provision of public assistance and social services in a local department of social services, in the event the local department fails, refuses or is unable to provide such services as prescribed in Subtitles II and III of the Section 63.2 of the Code of Virginia.

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.

n/a

Emergency Authority

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006. Please explain why this is an emergency situation as described above, and provide specific citations to the Code of Virginia or the Appropriation Act, if applicable.

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. Included in these services are critical safety-net programs, such as Medicaid, Supplemental Nutrition Assistance Program and Temporary Assistance to Need Families. In addition, localities administer programs that protect the safety and well-being of the Commonwealth's most vulnerable citizens, such as child protective services and foster care.

In the event a locality fails, refuses or is unable to provide these core services, the safety and well-being of those in need are seriously jeopardized. This emergency action will provide the Commissioner with regulatory authority to provide immediate direction and oversight to the local department, with appropriate State Board of Social Services (Board) proceedings. While this is not expected to be a frequent need, should the situation arise, the Commissioner would be able to provide the appropriate resources in a timely manner, in order to assess and remedy the situation in the local department.

Promulgating this regulation through the standard, three-stage process would take, at a minimum, 18 months and likely longer. Because of the human risk involved in not providing timely direction and oversight in the above scenario, the agency believes an emergency situation exists.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) the promulgating entity, i.e., agency, board, or person.

The legal basis for this action is § 63.2-217 of the Code of Virginia that requires the Board to adopt such regulations as may be necessary to carry out the purpose of Title 63.2. In addition, §§ 63.2-203, 63.2-333, 63.2-403(A)(4) and 63.2-408 provide legal basis for promulgating this regulation. The State Board of Social Services is the authorized promulgating agency.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

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 a local department fails or refuses to provide public assistance and social services in accordance with the statute, this regulatory action is needed to provide the Commissioner with authority to direct and oversee the provision of public assistance and social services in the locality.

Need

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

As explained above, localities are charged with administering public assistance and social services specifically intended to protect the health, safety and welfare of citizens. In the event the locality fails or refuses to do so, this emergency action would provide the Commissioner with regulatory authority to provide direction and oversight, so that the assistance and services can be administered.

Substance

Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the healthy, safety, or welfare of Virginians.

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
n/a	<p>The Commissioner will have authority to direct and oversee the administration of public assistance and social services, in the event a locality fails, refuses or is unable to do so. This would be done within appropriate Board proceedings.</p> <p>The Commissioner may withhold the entire reimbursement for administrative expenditures for the period the local department fails to operate</p>		<p>The intent and likely impact is that citizens would receive/continue to receive necessary public assistance and social services, in the event the locality fails, refuses or is unable to provide these services.</p> <p>In addition, the Board and local governing board would be kept apprised of progress made. Finally, the conditions under which the Commissioner's direction and oversight would cease would be clear to all</p>

	<p>public assistance programs or social service programs.</p> <p>The Commissioner will fill a monthly statement with the Comptroller and local governing authority a report showing all disbursements and expenditures.</p> <p>A transition plan setting out conditions for transferring direction and oversight back to the locality will be developed.</p> <p>The Commissioner will provide quarterly progress and financial information to the Board and local board.</p>		<p>parties.</p>
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Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

Section 63.2-408 of the Code of Virginia provides broad authority for the Commissioner to provide for the payment of public assistance or the furnishing of social services, through appropriate Board proceedings. Having this authority in the Virginia Administrative Code will better articulate responsibilities and expectations. An alternative would be to issue procedural guidance based on the Code. While guidance would set out recommended responsibilities and expectations, the agency believes regulatory authority is needed to achieve the specific purpose.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments. Please also indicate whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Karin Clark, Regulatory Coordinator, 801 E. Main Street, Richmond, VA 23219, karin.clark@dss.virginia.gov, 804-726-7017. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

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.

This regulatory action is primarily administrative in nature. It will have no impact on the institution of the family, parents' rights, or marital commitment. However, in the event a local department fails or refuses to provide public assistance and social services and the Commissioner does not have clear regulatory authority to provide direction and oversight to administer these programs, the economic self-sufficiency, safety and well-being of individuals and families could be impacted.