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TO: **KARIN CLARK**
Virginia Department of Social Services

FROM: **MICHELLE A. L'HOMMEDIEU** 
Assistant Attorney General

DATE: **May 1, 2019**

SUBJECT: **Fast-Track Regulations for Exemptions Applicable to Public Assistance
(5278/8616)**

I am in receipt of the attached regulation regarding the Exemptions Applicable to Public Assistance Programs (22 VAC 40-470-10). You have asked the Office of the Attorney General to review and determine if the State Board of Social Services ("State Board") has the statutory authority to repeal this regulation and if the repeal of this regulation comports with applicable state law.

Virginia Code § 63.2-217 mandates that the State Board promulgate regulations that are necessary to carry out the provisions of Title 63.2. The regulation at issue pertains to the Auxiliary Grant Program, the supervision of which has been transferred to the Virginia Department of Aging and Rehabilitative Services ("DARS"), and the Commissioner of DARS has authority to promulgate regulations under DARS's authority. The substance and language of regulation 22 VAC 40-470-10 can be found at 22 VAC 30-80-80 under the DARS's regulations governing the Auxiliary Grant Program.

Therefore, it is my opinion that the State Board has the authority to repeal regulation 22 VAC 40-470-10, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Order 14 (amended 2018), and has not exceeded that authority. To date, the Board has not yet acted on this regulation; and the Agency Background Document available on Town Hall reflects the anticipated future date of Board action.

Under Virginia Code § 2.2-4012.1, if an objection to the use of the fast-track process is received within the 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

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Commission on Administrative Rules, the Virginia Department of Social Services shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process set out in this article with the initial publication of the Fast-Track regulation serving as the Notice of Intended Regulatory Action. If you have any questions or need additional information about these regulations, please contact me at 786-6005.

cc: Kim F. Piner, Esq.

Attachment

Project 5985 – Fast Track

DEPARTMENT OF SOCIAL SERVICES

CH 470 Repeal Exemptions Applicable to Public Assistance

CHAPTER 470

EXEMPTIONS APPLICABLE TO PUBLIC ASSISTANCE PROGRAMS

~~22VAC40-470-10. Foreign government restitution payments to Holocaust survivors.~~

~~The value of foreign government restitution payments made to Holocaust survivors on or after August 1, 1994, shall be disregarded in the determination of eligibility or amount of assistance for the Auxiliary Grants Program as defined in § 51.5-160 of the Code of Virginia.~~