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TO: KARIN CLARK
Virginia Department of Social Services

FROM: MICHELLE A. L'HOMMEDIEU 
Assistant Attorney General

DATE: August 1, 2018

SUBJECT: Final Regulations Regarding Appeals of Financial Sanctions, 22 VAC 40-920
et seq. (4369/7898)

I am in receipt of the attached regulations to adopt new standards for appeals of financial sanctions 22 VAC 40-920 *et seq.* 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 promulgate these regulations and if these regulations comport 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, and federal regulations require oversight and appeal procedures for programs the Department of Social Services is responsible for monitoring. *See* 2 C.F.R. 200.341. As noted in the letter dated June 13, 2016, it is this Office's view that the State Board has the authority to promulgate the final regulations, 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 these regulations; and the Agency Background Document available on Town Hall reflects the anticipated future date of Board action.

Please note that Virginia Code § 2.2-4013(B) requires that all changes to the proposed regulation be highlighted in the final regulations, and it appears that this requirement has been fulfilled. The identified changes between the proposed and final regulations appear merely technical in nature or clarify the language in the regulation, and would not have a substantial impact and would not require additional comment. However, should the Governor find that one or more changes with substantial impact have been made to the proposed regulation, he may (but is not required to) require the provision of an additional thirty days to solicit additional public comment on the changes.

Karin Clark
August 1, 2018
Page 2

If you have any questions or need additional information about these regulations, please contact me at 786-6005.

cc: Kim F. Piner, Esquire

Attachment

DEPARTMENT OF SOCIAL SERVICES

Promulgation of New Regulation Regarding the Appeals of Financial Sanctions

CHAPTER 920

APPEALS OF FINANCIAL RECOVERIES FOR LOCAL DEPARTMENTS OF SOCIAL
SERVICES

22VAC40-920-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Commissioner" means the commissioner of the department, his designee, or his authorized representative.

["Disallowed costs" means those charges to a program that the Department determines to be unallowable, in accordance with applicable State and Federal statutes, regulations or policy.]

"Department" means the Virginia Department of Social Services.

"Local department" means the local department of social services of any county or city in the Commonwealth.

"Notification of a recovery" means any report, letter, email, or other type of communication describing the noncompliance action or recovery.

["Recovery" means the repayment by the local department of a disallowed cost in a manner proscribed by the Department, in accordance with applicable State and Federal statutes, regulations, or policy.]

22VAC40-920-20. Objections to notifications of recovery.

A local department that wants to appeal a notification of recovery shall:

1. Within [15 21] calendar days of issuance of a notification of a recovery, provide written notice to the commissioner of its objection to the recovery; and
2. Within [15 21] 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.

22VAC40-920-30. Dismissal; burden of proof.

A. If the local department fails to appeal the recovery within the timeframe specified in 22VAC40-920-20, the right to appeal is lost.

B. The local department has the burden of proof to provide additional information that would reduce or remove the recovery.

C. If the local department fails to timely file a notice of appeal or fails to timely provide additional information for appealing the recovery, the requirements of the recovery shall become effective 30 calendar days from the date of issuance of the notification of a recovery.

22VAC40-920-40. Final decision by the commissioner.

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 Richmond, Virginia, area~~ If the local department timely files a notice of appeal, the commissioner shall provide an opportunity for a hearing at a time, date, location and in a manner to be determined by the commissioner. A written notice of the hearing shall be given to the local department at least five calendar days before the hearing.]

1. The local department is entitled to be represented by counsel at all hearings and meetings related to appeals.

2. The local department will forfeit its right to further its appeal if it fails to show for the hearing, unless the commissioner approves the local department's request to reschedule the hearing.

B. The commissioner shall issue a final decision within 60 [calendar] days following the date the local department filed its objection with the commissioner. The final decision shall be based on the commissioner's review of the recovery details in addition to the evidence, information, and documentation provided by the local department pertaining to the recovery being appealed. The final decision shall be made in accordance with all applicable laws, regulations, and policies.

C. The final decision of the commissioner is (i) final, (ii) binding, and (iii) not subject to judicial review.

D. The local department shall implement the decision within 30 [calendar] days of the date of the final decision.