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## Final Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	22VAC40-920
<b>VAC Chapter title(s)</b>	Appeals of Financial Recoveries for Local Departments of Social Services
<b>Action title</b>	Promulgation of New Regulation Regarding the Appeals of Financial Sanctions
<b>Date this document prepared</b>	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 Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. 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

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

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

### Statement of Final Agency Action

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.

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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.

### Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

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There are no changes to previously reported information.

### Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

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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

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

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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**

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.*

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**

*Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

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**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.*

The proposed regulation does not exceed applicable federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.*

Other State Agencies Particularly Affected

No other state agencies are particularly affected.

Localities Particularly Affected

No other localities are particularly affected.

Other Entities Particularly Affected

No other entities are particularly affected.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

No comments were received during the public comment period.

Commenter	Comment	Agency response

**Detail of Changes Made Since the Previous Stage**

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
10	N/A	Added definitions for the following – “Disallowed Costs” “Recovery”	N/A	Added to clarify meaning of language used in regulation.
20.A.1.	N/A	N/A	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.	N/A	N/A	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.	<p>Changed from “15 calendar days” to “21 calendar days.” Changed to provide the local department adequate time to prepare for appeal.</p> <p>Deleted “termination action.” Deleted, as this term is not consistent with the type of Department reviews and audits that may lead to a recovery.</p>
40.A.	N/A	N/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.	<p>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 department at least five calendar days before the hearing.</p> <p>Changed to provide flexibility for the commissioner and local department to hold a hearing based on the specific needs of each unique situation.</p>
40.B.	N/A	N/A	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.	N/A	N/A	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.

**Detail of All Changes Proposed in this Regulatory Action**

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
10	N/A	N/A	Defines the terms used in the proposed regulation.
20	N/A	N/A	<p>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).</p> <p>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.</p>
30	N/A	N/A	<p>This section establishes that the local department loses its right to appeal if it does not appeal within the specified timeframes. The burden of proof falls upon the local department of social services.</p> <p>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>
40	N/A	N/A	The Commissioner provides a hearing opportunity and if the local department fails to show, the appeal right is

			<p>forfeited unless rescheduled. Final decision is rendered within 60 days of the local department's filing of the objection.</p> <p>This section addresses the Commissioner's responsibilities to:</p> <ul style="list-style-type: none"><li>• review all relevant information provided by the Department and local department and</li><li>• 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.</li></ul> <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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