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Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC40-677
VAC Chapter 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	June 19, 2019

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.

The purpose of this proposed regulation is to provide the Commissioner of the Department of Social Services 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.

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.

n/a

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

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. There is human risk involved in not providing timely direction and oversight in this scenario. Section § 63.2-203 requires the State Board of Social Services to establish regulations that provide the Commissioner with authority to provide immediate direction and oversight to the local department, with appropriate State Board of Social Services proceedings. To that end, the emergency regulation became effective December 16, 2018. The emergency regulation expires June 16, 2020 and this action is necessary to establish a permanent replacement.

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.

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

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.

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. The regulation is essential to protecting the health and welfare of citizens because it will ensure that public assistance and social services will continue to be provided.

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.

Substantive provisions grant the Commissioner, to the extent allowed by federal and state law, authority to: direct and oversee public assistance and social services in a local department when the local department fails to do so; withhold reimbursement of administrative expenditures when a local department fails to provide necessary staff; file a monthly statement with the State Comptroller and local governing body showing disbursements and expenditures; and develop a transition plan in consultation with the locality.

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.

The primary advantage to the public and local department of social services customers is assurance that, in the event a local department fails to provide public assistance or social services, assistance and services will continue in a seamless fashion. The primary advantage to the agency and Commonwealth is that Virginia Administrative Code authority will be in place for the State Board of Social Services and Commissioner to act as necessary. The need for state direction and oversight is not expected to be frequent.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no requirements that are more restrictive or exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other state agencies are affected

Localities Particularly Affected

Each county and city that is required to provide public assistance and social services in accordance with provisions prescribed in Subtitles II (§ 63.2-500 et seq.) and III (§ 63.2-900 et seq.) of Title 63.2 of the Code of Virginia. There are 120 local departments of social services that represent counties and cities that provide public assistance and social services.

Other Entities Particularly Affected

Other entities are not affected.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>For the agency, the cost could be absorbed using existing resources and federal/state funds until the agency is reimbursed by the locality for all disbursements, including administrative expenditures made for and on behalf of the locality by the agency.</p> <p>Direction and oversight by the Commissioner is not expected to be frequent. The length of time of the intervention would be determined on a case-by-case basis.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>None.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>In the event a local department fails to provide public assistance or social services, assistance and services will continue to be delivered.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>For the locality, the impact will depend on the financial conditions of the local department and that of the locality. The reimbursement costs could be absorbed by the locality using existing funds. If the local department reports costs through the Staff & Operations Base funds, the match rate of 15.5% local funds and 84.5% federal/state funds would apply. If this were the case, there would be no additional impact on the locality.</p>
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	<p>If the local department reports costs through Staff & Operations Pass-Thru, the match rate of 65% local funds and 35% federal funds would apply. If this were case, there will be higher costs to the locality. This would typically occur when the locality's base budget is insufficient to cover all of its staff and operations costs.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>A benefit of the regulatory change would ensure timely assistance to those at risk and in need of public assistance and social services.</p> <p>This regulation would also ensure localities provide public assistance and social services in accordance with the provisions of Subtitles II (§ 63.2-500 et seq.) and III (§ 63.2-900 et seq.) of Title 63.2 of the Code of Virginia.</p>

Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	n/a
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. 	n/a
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. 	n/a
<p>Benefits the regulatory change is designed to produce.</p>	n/a

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the

regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

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.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

The agency believes that this regulation is the least stringent to localities and the lives of the citizens of the Commonwealth. The regulation would apply to a local department of social services that fails, refuses, or is unable to provide such services as prescribed in Subtitles II (§ 63.2-500 et seq.) and III (§ 63.2-900 et seq.) of Title 63.2 of the Code of Virginia. The Commissioner’s responsibility to direct and oversee is not intended to be permanent. The regulation requires the Commissioner, in consultation with the county or city, to develop a transition plan that sets the condition under which the responsibility to direct and oversee the programs is transferred back to the county or city.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This form is not being used to report a periodic review.

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.

Committer	Comment	Agency response
<p>Alan Schuman, Chairman, Fairfax County Advisory Social Services Board</p>	<p>Clarity is needed on the definition of “failure” to provide public assistance or social services.</p> <p>The difference between the triggers for the Commissioner directing and controlling a locality’s services and withholding reimbursement needs to be specified.</p> <p>Clear Performance and Outcome Measures are required to clarify the standards by which the state will assess local social service agencies. Such standards would improve outcomes for children and families.</p> <p>Further details are needed regarding the ongoing maintenance of measures taken by the Commissioner once responsibility to direct and oversee the programs is transferred back to the county or city.</p>	<p>Determining when a locality is failing to provide assistance or social services will depend on the circumstances, the needs of the community and gaps in levels of service. The Commissioner may use available data obtained from prior engagements with the local department, performance data, management tools, monitoring results and other reports/information available as appropriate.</p> <p>Triggers related to the Commissioner’s directing and overseeing the local department are addressed in the first response. Triggers related to withholding reimbursement will be in accordance with § 63.2-408 of the Code of Virginia.</p> <p>The Virginia Department of Social Services (VDSS) will utilize available information to identify gaps between expected outcomes and the current state of service delivery.</p> <p>Once transferred back to the county or city, the VDSS and Commissioner will continue to carryout responsibilities as prescribed in Title 63.2 of the Code of Virginia.</p>

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The State Board of Social Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Angela C. Morse, Director, Regional Operations and Local Support, 801 E. Main Street, Richmond, Virginia 23219-2901, Phone Number (804) 726-7365, Cell Number (804) 396-0310; Email angela.morse@dss.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. 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. Use all tables that apply, but delete inapplicable tables.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements
10	<p>Cities and counties must provide public assistance and social services in Subtitles II and III of Title 63.2 of the Code of Virginia.</p> <p>If a locality refuses, or is unable to provide public assistance or social services and with appropriate proceedings by the Board of Social Services, the Commissioner will have authority (to the extent allowed by federal and state law) to direct and oversee all programs set forth in Subtitles II and III for that particular county or city, including providing for the payment of public assistance and expenditures for social services and administration.</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 parties.</p> <p>State Response Guidance Manual will provide detailed information.</p>

	<p>The commissioner may also withhold from locality the entire reimbursement for administrative expenditures for the period of time the locality fails to operate public assistance programs or social service programs in accordance with state laws and regulations or fails to provide the necessary staff for the implementation of such programs.</p> <p>The Commissioner will file monthly with the State Comptroller and local governing body a statement showing all disbursements and expenditures, including administrative expenditures, made for and on behalf of the locality. The State Comptroller will, from time to time as such funds become available, deduct from funds appropriated by the Commonwealth, in excess of requirements of the Constitution of Virginia, for distribution to the locality amounts required to reimburse the Commonwealth for expenditures incurred under the provisions of this section.</p> <p>In consultation with the locality, the Commissioner will develop a transition plan that sets the conditions under which the responsibility to direct and oversee the programs is transferred back to the locality.</p> <p>The Commissioner will report quarterly to the State Board of Social Services and to the local board of social services on the status of services and expenditures in the locality</p>		
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	as well as the progress toward developing and meeting the conditions of the transition plan.		