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TO: KARIN CLARK
Virginia Department of Social Services

FROM: MICHELLE A. L'HOMMEDIU 
Assistant Attorney General

DATE: June 13, 2016

SUBJECT: Proposed Regulations Regarding Appeals of Financial Sanctions, 22 VAC 40-920 *et seq.* (4369/7486)

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 the proposed regulations and if the proposed 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 requires oversight and appeal procedures for local departments. *See* 2 C.F.R. 200.341. It is my opinion that the State Board has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA"), 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.

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

cc: Kim F. Piner, Esquire

Attachment

Project 4569 - Proposed

DEPARTMENT OF SOCIAL SERVICES

Promulgation of New Regulation Regarding the Appeals of Financial Recoveries

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.

"Department" means the State 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 non-compliance action or recovery.

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

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

1. Within 15 calendar days of issuance of a notification of a recovery, the local department shall provide written notice to the commissioner of its objection to the recovery.

2. Within 15 calendar days of filing its notice of objection with the commissioner, the local department shall 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 specified timeframe, 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.

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 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 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 days of the date of the final decision.