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

FROM: **SUSAN P. D. WHYTE** *SPP*
Assistant Attorney General

DATE: **August 6, 2020**

SUBJECT: **Exempt Final Regulation –22 VAC 40-35**

I am in receipt of the attached regulation to amend 22 VAC 40-35. 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 this regulation and if it 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 proposed amendments to the regulation are necessary to reflect the changes to Va. Code § 63.2-617 by the adoption of Chapter 1159 of the 2020 Acts of Assembly and the amending of Va. Code §§63.2-609 and 63.2-1908 along with the repealing of § 63.2-604 by Chapter 550 of the 2020 Acts of Assembly.

Based on my review, it is my view that the State Board has the authority to promulgate the final regulation, and has not exceeded that authority. It is my view that the amendments to this regulation are exempt from the procedures of Article 2 of the Virginia Administrative Process Act.

If you have any questions or need additional information about this regulation, please contact me at 786-3450.

DEPARTMENT OF SOCIAL SERVICES

Amend Diversionary Assistance

22VAC40-35-40. Diversionary assistance program eligibility criteria.

A. An assistance unit shall be eligible to receive diversionary cash assistance if:

1. Verification is provided to the local department of social services that the assistance unit has a temporary loss of income or delay in starting to receive income resulting in an emergency;
2. The assistance unit meets TANF requirements specified in § 63.2-617 of the Code of Virginia; and
3. The local department of social services determines that diversionary assistance will resolve the emergency.

B. The amount of assistance provided shall be up to the maximum TANF amount for 120 days that the family would otherwise be eligible to receive, or \$1,500, whichever is greater. The amount of the payment is based on immediate needs of the applicant. Local agencies shall strive to provide the most cost-effective solution to the one-time emergency.

C. If an assistance unit receives a diversionary assistance payment, all assistance unit members shall be ineligible for TANF for 1.33 times the number of days for which assistance is granted, beginning with the date that the diversionary assistance is issued.

D. An assistance unit shall be eligible to receive diversionary assistance once in a 12-month period.

E. Receipt of diversionary assistance is voluntary.

F. Local social services agencies shall determine eligibility for diversionary assistance within five working days of the receipt of the final verification that substantiates eligibility, or within 30 days of the date of the receipt of the signed application, whichever occurs first.

~~22VAC40-35-70. Limitation on TANF benefits.~~

~~A. A recipient family is not entitled to an increase in TANF benefits if the mother of such recipient family gives birth to an additional child during the period of the family's eligibility for financial assistance.~~

~~B. Applicants for TANF financial assistance shall receive notice of the provisions of this section at the time of application. At application or redetermination, such applicant or recipient shall sign a notification acknowledging that they have read and understand the notice.~~

~~C. The provisions of this section shall not apply to a child born or adopted during the 10 months following the implementation effective date nor to a child born or adopted during the 10 full calendar months following the month in which the initial assistance check is issued.~~

~~D. The provisions of this section shall apply equally to recipient families who adopt a child except that the provision shall be applied using the date of entry of the interlocutory order instead of the child's birthdate.~~