



COMMONWEALTH of VIRGINIA
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MEMORANDUM

TO: L. RICHARD MARTIN, JR.
Virginia Department of Social Services

FROM: ALLEN T. WILSON
Assistant Attorney General

DATE: August 4, 2004

SUBJECT: Final Regulation 22 VAC 40-141-10 et seq.
Licensing Standards for Independent Foster Homes

I have reviewed the attached final regulation to determine if the changes made to the proposed regulation exceed the statutory authority of the State Board of Social Services ("State Board") to promulgate the final regulation and if the final regulation comports with applicable state law.

As noted in my memoranda dated April 8, 2003, it is this Office's view that the State Board has the authority to promulgate the proposed regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Order 21 (2002), and has not exceeded that authority.

It appears that the changes to the proposed regulation are not changes with "substantial impact," and, therefore do not necessitate an additional comment period. These changes merely clarify the language in the regulation.

It does not appear that there are any changes that constitute changes with "substantial impact," which could necessitate an additional comment period. Please note that Va. Code § 2.2-4013(B) requires that all changes to the proposed regulations be highlighted in the final regulations, and it appears that this requirement has been fulfilled. Also, pursuant to § 2.2-4013(C), if the Governor finds that one or more changes with substantial impact have been made to the proposed regulation, he *may* (but is not required to) direct DSS to provide an additional thirty days to solicit additional public comment on the changes. In addition, Va. Code § 2.2-4007(K) requires the agency to solicit additional public comment, *if* it receives requests from at least twenty-five persons for an opportunity to submit oral and written comments on the changes to the regulation and if one or more changes with substantial impact were made to the proposed regulation.

If you have any questions, please feel free to call me at 786-3450.