



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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MEMORANDUM

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

FROM: ALLEN T. WILSON
Senior Assistant Attorney General

DATE: June 2, 2010

SUBJECT: Final Regulation 22 VAC 40-201-10 et seq.
Permanency Services – Prevention, Foster Care,
Adoption and Independent Living

I have reviewed the above-referenced final regulation to determine if the State Board of Social Services (“State Board”) has the statutory authority to promulgate the final regulation and if the final regulation comports with applicable state law. This regulatory action also was reviewed to determine if the State Board has the statutory authority to repeal eight regulations, 22 VAC-200 Foster Care-Guiding Principles; 22 VAC-210 Foster Care-Assessing the Client’s Needs; 22 VAC 40-240 Non-agency Placement for Adoption-Consent; 22 VAC 40-250 Agency Placement Adoptions-AREVA; 22 VAC 40-260 Agency Placement Adoptions-Subsidy; 22 VAC 40-280 Non-agency Placements for Adoption-Adoptive Home Study; 22 VAC 40-800 Family Based Social Services; and 22 VAC 40-810 Fees For Court Services Provided By Local Departments of Social Services. The repealed regulations will be replaced by the final regulation.

As noted in my memorandum dated May 15, 2009, it is this Office’s view that the State Board has the authority to repeal the existing regulations and promulgate the final replacement regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Order 107 (2009), and has not exceeded that authority.

It appears that several changes to the final regulation are not changes with "substantial impact," and, therefore do not necessitate an additional comment period. Those changes are merely technical in nature or clarify the language in the regulation. It also appears that there are several changes to the proposed regulation that may constitute changes with “substantial impact,” and could necessitate an additional comment period.

Please note that Va. Code § 2.2-4013(B) requires that all changes to the proposed regulation 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.

If you have any questions, please feel free to call me at 786-0095.