



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
Assistant Attorney General

DATE: July 23, 2009

SUBJECT: Repeal of Regulation 22 VAC 40-110-10 et seq.
Minimum Standards for Licensed Family Day Homes
Final Regulation 22 VAC 40-111-10 et seq.
Standards for Licensed Family Day Homes

I have reviewed the proposed repeal of 22 VAC 40-110-10 et seq., Minimum Standards for Licensed Family Day Homes. I also have reviewed the above-referenced proposed regulation, 22 VAC 40-111-10 et seq., Standards for Licensed Family Day Homes, which is being proposed to replace 22 VAC 40-110-10 et seq. I have reviewed these actions to determine if the State Board of Social Services (“State Board”) has the statutory authority to repeal the one regulation and promulgate the proposed regulation and if the proposed regulation comports with applicable state law.

As noted in Noëlle Shaw-Bell’s memorandum dated June 10, 2008, it is this Office’s view that the State Board has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Order 36 (2006), and has not exceeded that authority.

It appears that there have been changes to the proposed regulation that 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 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 § 2.2-4007.06 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 786-0095.