



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: January 30, 2009

SUBJECT: Final Regulation 22 VAC 40-35-5 et seq.
Virginia Independence Program

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.

As noted in my memorandum dated November 28, 2007, it is this Office's view that the State Board has the authority to promulgate the final 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 the one change to the proposed regulation, which is incorporated in the final regulation, does not constitute a change with "substantial impact," and, therefore does not 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.