



# **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:** May 15, 2009

**SUBJECT:** Final Regulation 22 VAC 40-35-10 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 this action by the State Board is exempt from the Administrative Process Act (APA).

It appears that the State Board has the authority to promulgate the proposed regulation, subject to compliance with the provisions of Article 2 of the APA, and has not exceeded that authority. The changes to the regulation are necessary to reflect the changes in Code by the adoption of Chapter 61 of the 2009 Acts of Assembly, which amended Virginia Code § 63.2-617, which relates to the payment of diversionary assistance, requiring the State Board to amend this regulation. Pursuant to § 2.2-4006(A)(4)(a) of the Virginia Code, this action by the Board is exempt from the requirements of the APA.

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