

TO: MARGARET SCHULTZE, Commissioner
Virginia Department of Social Services

FROM: ELLEN FULMER MALENKE
Assistant Attorney General

DATE: July 6, 2016

SUBJECT: Regulation Section - 22VAC40-705 (Review & Amend CPS Regulation)

I am in receipt of the attached amended CPS regulations. You have asked the Office of the Attorney General to review and determine if the State Board of the Virginia Department of Social Services has the statutory authority to promulgate the proposed regulation and if the proposed regulation comports with applicable state and federal law.

This regulatory action serves as a comprehensive review of the agency's child protective services regulations. This action repeals 22VAC40-700 and 22VAC40-720 and incorporates those provisions into 22VAC40-705. This regulation establishes the regulatory framework for protecting children from abuse and neglect. The regulation provides direction for how to best protect children while balancing the rights of parents and family integrity.

It is my opinion that the State Board of DSS has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA") and has not exceeded that authority.

It is my view that this regulation is not exempt from but is subject to the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(a). If you have any questions or need additional information about these regulations, please contact me at 786-4856.

cc: Kim F. Piner, Esquire
Attachment