



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: October 3, 2003

SUBJECT: Repeal of Regulation 22 VAC 40-770-10 et seq.
Standards and Regulations for Agency Approved Providers
Proposed Regulation 22 VAC 40-771-10 et seq.
Local Department Approved Provider Standards

I have reviewed the proposed repeal of 22 VAC 40-770-10 et seq., Standards and Regulations for Agency Approved Providers. I also have reviewed the above-referenced proposed regulation, 22 VAC 40-771-10 et seq., Local Department Approved Provider Standards, which is being proposed to replace 22 VAC 40-770-10 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.

Virginia Code § 63.2-217 mandates that the State Board promulgate regulations that are necessary to carry out the provisions of Title 63.2. Specifically, Title 63.2, Chapter 9 deals foster care; Chapter 12 deals with adoptions; Chapter 16 deals with adult services; and Chapters 17 and 18 deal with family day homes and adult day care. It appears that the State Board has the authority to repeal 22 VAC 40-770-10 et seq. and promulgate its replacement, 22 VAC 40-771-10 et seq., subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Order 21 (2002), and has not exceeded that authority.

If you have any questions, please feel free to call me at 225-3219.