



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: December 1, 2004

SUBJECT: Repeal of Regulation 22 VAC 40-120-10 et seq.
Minimum Standards for Licensed Family Day-Care Systems
Final Regulation 22 VAC 40-121-10 et seq.
Standards for Licensed Family Day-Care Systems

I have reviewed the proposed repeal of 22 VAC 40-120-10 et seq., Minimum Standards for Licensed Family Day-Care Systems. I also have reviewed the attached final regulation, 22 VAC 40-121-10 et seq., Standards for Licensed Family Day-Care Systems, which is being proposed to replace 22 VAC 40-120-10 et seq. I have reviewed these actions to determine if the changes made to the proposed regulation exceed the statutory authority of the State Board of Social Services ("State Board").

As noted in my memoranda dated October 2, 2003, it is this Office's view that the State Board has the authority to repeal 22 VAC 40-120-10 et seq. and promulgate its replacement, 22 VAC 40-121-10 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.

It appears that several changes to the final regulation are not changes with "substantial impact," and therefore do not necessitate an additional comment period. Those changes merely technical in nature or clarify the language in the regulation.

It also appears that there is at least one change that constitutes a change 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(K) 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 786-3450.

Attachment