



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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MEMORANDUM

TO: L. RICHARD MARTIN, JR.
Virginia Department of Social Services

FROM: NOËLLE L. SHAW-BELL
Assistant Attorney General

DATE: December 4, 2006

SUBJECT: Final Regulation 22 VAC 40-740-10 et seq.
Adult Protective Services

I have reviewed the attached final regulation to determine if the changes made to the proposed regulation exceed the statutory authority of the State Board of Social Services ("State Board") to promulgate the final regulation and if the final regulation comports with applicable state law.

As noted in Cameron O'Brion's Memorandum dated November 24, 2004, it is this Office's view that the State Board has the authority to promulgate the proposed 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 changes to the regulation, which are incorporated in the attached final regulation, are not changes with "substantial impact" which would necessitate an additional comment period. Please note that Va. Code § 2.2-4013(B) requires that all changes to 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 225-2741.

cc. Kim F. Piner, Sr. Assistant Attorney General and Section Chief