



# **COMMONWEALTH of VIRGINIA**

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## **MEMORANDUM**

**TO:** KARIN CLARK  
Virginia Department of Social Services

**FROM:** ALLEN T. WILSON  
Senior Assistant Attorney General

**DATE:** February 2, 2011

**SUBJECT:** Repeal of Regulation 22 VAC 40-180-10 et seq.  
Voluntary Registration of Family Day Homes – Requirements for Providers  
Proposed Regulation 22 VAC 40-181-10 et seq.  
Standards for Voluntary Registration of Family Day Homes

I have reviewed the proposed repeal of 22 VAC 40-180-10 et seq., Voluntary Registration of Family Day Homes – Requirements for Providers. I also have reviewed the above-referenced proposed regulation, 22 VAC 40-181-10 et seq., Standards for Voluntary Registration of Family Day Homes, which is being proposed to replace 22 VAC 40-180-10 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 § 63.2-1704 mandates that the State Board promulgate regulations to “for voluntarily registered family day homes.” It appears that the State Board has the authority to repeal 22 VAC 40-180-10 et seq. and promulgate its replacement, 22 VAC 40-181-10 et seq., subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Order 14 (2010), and has not exceeded that authority.

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