



# **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:** June 13, 2013

**SUBJECT:** Final Regulation 22 VAC 40-745-10 et seq.  
Assessment in Assisted Living Facilities

I have reviewed the above-referenced final regulation to determine if the State Board of Social Services ("State Board") has the statutory authority to promulgate the final regulation and if the final regulation comports with applicable state law.

As noted in my memorandum dated March 25, 2011, it is this Office's view that the State Board has the authority to promulgate the regulation, 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.

It appears that there have been changes to the proposed regulation. Some of these changes may be viewed as changes with "substantial impact" and could necessitate an additional comment period.

Please note that Va. Code § 2.2-4013(B) require that all changes to the proposed regulation be highlighted in the final regulation, 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 § 2.2-4007.06 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 786-0095.