



# **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 12, 2012

**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 this action by the State Board is exempt from the Administrative Process Act (APA).

It appears that the State Board has the authority to promulgate the proposed regulation, subject to compliance with the provisions of Article 2 of the APA, and has not exceeded that authority. The changes to the regulations are necessary to reflect the changes in Code by the adoption of Chapters 476 and 507 of the 2012 Acts of Assembly, which changed the term "mental retardation" to "intellectual disability", as well as the statutory citations changed by Chapters 803 and 835. Also, reference to Title 37.1 are being changed to reflect its repeal and placement with Title 37.2 by the 2005 Acts of Assembly. Finally, there are changes to several regulatory citations that reflect previous actions taken by the Board. These changes require the State Board to amend this regulation to ensure that it is consistent with the statutory language. Pursuant to § 2.2-4006(A)(4)(a) of the Virginia Code, this action by the Board is exempt from the requirements of the APA.

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