



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: April 15, 2005

SUBJECT: Final Regulation 22 VAC 40-90-10 et seq.
Regulation for Criminal Record Checks for Assisted
Living Facilities and Adult Day Care Centers

I have reviewed the attached 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 Chapter 924 of the 2005 Acts of Assembly, which gave the Commissioner additional responsibilities relating to background checks for assisted living facilities. There also are several changes in language to correspond with statutory changes that took place when Title 63.1 of the Code was re-codified and replaced with Title 63.2. Pursuant to §§ 2.2-4006(A)(3) and 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.

Attachment