



**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:** October 2, 2003

**SUBJECT:** Repeal of Regulation 22 VAC 40-120-10 et seq.  
Minimum Standards for Licensed Family Day-Care Systems  
Proposed Regulation 22 VAC 40-121-10 et seq.  
Standards for Licensed Family Day-Care Systems

I have reviewed the proposed repeal of 22 VAC 40-120-10 et seq., Minimum Standards for Licensed Family Day-Care Systems. I also have reviewed the above-referenced proposed regulation, 22 VAC 40-121-10 et seq., Standards for Licensed Family Day-Care Systems, which is being proposed to replace 22 VAC 40-120-10 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 § 63.2-1734 mandates that the State Board promulgate regulations to "for the activities, services and facilities to be employed" by licensed child welfare agencies. Virginia Code § 63.2-100 includes family day systems in the definition of "child welfare agency." It appears that the State Board has the authority to repeal 22 VAC 40-120-10 et seq. and promulgate its replacement, 22 VAC 40-121-10 et seq., subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Order 21 (2002), and has not exceeded that authority.

If you have any questions, please feel free to call me at 225-3219.