



# **COMMONWEALTH of VIRGINIA**

*Office of the Attorney General*

Robert F. McDonnell  
Attorney General

900 East Main Street  
Richmond, Virginia 23219  
804-786-2071  
FAX 804-786-1991  
Virginia Relay Services  
800-828-1120  
7-1-1

## **MEMORANDUM**

**TO:** L. RICHARD MARTIN, JR.  
Virginia Department of Social Services

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

**DATE:** November 28, 2007

**SUBJECT:** Proposed Regulation 22 VAC 40-35-5 et seq.  
Virginia Independence Program

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

Virginia Code § 63.2-217 mandates that the State Board promulgate regulations that are necessary to carry out the provisions of Title 63.2. Additionally, Virginia Code §§ 63.2-608, 63.2-609, 63.2-611, 63.2-612, 63.2-613 and 63.2-614 require the State Board to promulgate regulations specific to this program. 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 Administrative Process Act and Executive Order 36 (2006), and has not exceeded that authority.

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