



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 7, 2003

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

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 § 63.2-1732 mandates that the State Board promulgate regulations to carry out the provisions of Title 63.2, Chapter 17, which deals with licensure procedures for assisted living facilities. That section also requires the State Board to promulgate regulations that "protect the health, safety, welfare and individual rights of residents" in assisted living facilities. 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 21 (2002), and has not exceeded that authority.

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