



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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MEMORANDUM

TO: KARIN CLARK
Virginia Department of Social Services

FROM: ALLEN T. WILSON
Senior Assistant Attorney General

DATE: September 26, 2011

SUBJECT: Final Regulation 22 VAC 40-221-10 et seq.
Additional Daily Supervision Rate Structure

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 the final regulation comports with applicable state law.

As noted in my memorandum dated September 25, 2009, it is this Office's view that the State Board has the authority to repeal the existing regulations and promulgate the final replacement regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Order 14 (2010), and has not exceeded that authority.

It appears that several changes to the final regulation are not changes with "substantial impact," and, therefore do not necessitate an additional comment period. Those changes are merely technical in nature or clarify the language in the regulation. It also appears that there are several changes to the proposed regulation that may constitute changes with "substantial impact," and could necessitate an additional comment period.

Please note that Va. Code § 2.2-4013(B) requires that all changes to the proposed regulation be highlighted in the final regulations, and it appears that this requirement has been fulfilled. Also, pursuant to § 2.2-4013(C), if the Governor finds that one or more changes with substantial impact have been made to the proposed regulation, he *may* (but is not required to) direct the State Board to provide an additional thirty days to solicit additional public comment on the changes.

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