

MEMORANDUM

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

FROM: NOËLLE L. SHAW-BELL
Assistant Attorney General

DATE: October 26, 2006

SUBJECT: Emergency Regulations 22 VAC 40-705-10 and -30
Child Protective Services

I have reviewed the attached emergency regulations to determine if the changes made to the proposed regulation exceed the statutory authority of the State Board of Social Services (“State Board”) to promulgate the emergency regulations and if the emergency regulations comport with applicable state law.

Pursuant to Va. Code § 63.2-217, the State Board is required to promulgate regulations as may be necessary or desirable to carry out the purposes of § 63.2-100. Pursuant to Va. Code § 2.2-4011, the Board has the authority to promulgate emergency regulations. As the statute and regulations in question address illnesses that may be terminal in nature, it is the view of this Office that the requirements of “an emergency situation” pursuant to § 2.2-4011 are met. Consequently, it is my opinion that the Board has the authority to promulgate these regulations, 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 225-2741.

cc. Kim F. Piner, Sr. Assistant Attorney General and Section Chief