



COMMONWEALTH of VIRGINIA

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MEMORANDUM

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

FROM: ALLEN T. WILSON
Senior Assistant Attorney General

DATE: February 17, 2009

SUBJECT: Proposed Regulation 22 VAC 40-201-10 et seq.
Permanency Services-Prevention, Foster Care,
Adoption and Independent Living

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 this action by the State Board comports with applicable state law. This regulatory action also was reviewed to determine if the State Board has the statutory authority to repeal seven regulations, 22 VAC-200 Foster Care-Guiding Principles; 22 VAC-210 Foster Care-Assessing the Client's Needs; 22 VAC 40-240 Non-agency Placement for Adoption-Consent; 22 VAC 40-250 Agency Placement Adoptions-AREVA; 22 VAC 40-260 Agency Placement Adoptions-Subsidy; 22 VAC 40-280 Non-agency Placements for Adoption-Adoptive Home Study; and 22 VAC 40-800 Family Based Social Services. The repealed regulations will be replaced by the proposed regulation.

Virginia Code § 63.2-217 mandates that the State Board promulgate regulations that are necessary to carry out the provisions of Title 63.2. Virginia Code §§ 63.2-900, 63.2-901.1, 63.2-904, 63.2-907, 63.2-908 specifically authorize the State Board to promulgate regulations relating to various aspects of foster care. It appears that the State Board has the authority to repeal the existing regulations and promulgate the proposed replacement regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Order 6 (2006), and has not exceeded that authority.

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