



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: KARIN CLARK
Virginia Department of Social Services

FROM: ALLEN T. WILSON
Senior Assistant Attorney General

DATE: May 18, 2012

SUBJECT: Final Regulation 22 VAC 40-90-10 et seq.
Regulation for Criminal Record Checks for Assisted
Living Facilities and Adult Day Care Centers

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 this action by the State Board is exempt from the Administrative Process Act (APA).

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 APA, and has not exceeded that authority. The changes to the regulations are necessary to reflect the changes in Code by the adoption of Chapter 383 of the 2012 Acts of Assembly, which added certain offences to the barrier crime definition, requiring the State Board to amend this regulation to ensure that it is consistent with the statutory language. Pursuant to § 2.2-4006(A)(4)(a) of the Virginia Code, this action by the Board is exempt from the requirements of the APA.

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