



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*  
*Richmond 23219*

**Jerry W. Kilgore**  
Attorney General

900 East Main Street  
Richmond, Virginia 23219  
804-786-2071  
804-371-8947 TDD

**MEMORANDUM**

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

**FROM:** ALLEN T. WILSON  
Assistant Attorney General

**DATE:** December 9, 2004

**SUBJECT:** Final Regulation 22 VAC 40-170-10 et seq.  
Voluntary Registration of Family Day Homes – Requirements for  
Contracting Organizations

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

As noted in Cameron O’Brion’s letter dated April 8, 2004, it is this Office’s view 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.

It appears that the changes to the regulation, which are incorporated in the attached final regulation, are not changes with "substantial impact," which would necessitate an additional comment period. The changes are technical in nature and primarily conform the language of the final regulation with the language in other regulations.

Please note that Va. Code § 2.2-4013(B) requires that all changes to the proposed regulation be highlighted in the final regulation, 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 DSS to provide an additional thirty days to solicit additional public comment on the changes. In addition, Va. Code § 2.2-4007(J) requires the agency to solicit additional public comment, *if* it receives requests from at least twenty-five persons for an opportunity to submit oral and written comments on the changes to the regulation and if one or more changes with substantial impact were made to the proposed regulation.

If you have any questions, please feel free to call me at 786-3450.

Attachment