



# 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:** March 26, 2009

**SUBJECT:** Final Regulation 22 VAC 40-211-10 et seq.  
Resource, Foster and Adoptive Family Home Approval Standards

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 February 13, 2008, it is this Office's view that the State Board has the authority to promulgate the final regulation, 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.

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 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 DSS 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.