



COMMONWEALTH of VIRGINIA

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MEMORANDUM

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

FROM: ALLEN T. WILSON
Assistant Attorney General

DATE: June 6, 2006

SUBJECT: Proposed Emergency Regulation 22 VAC 40-35-10 et seq.
Virginia Independence Program

I have reviewed the attached proposed emergency regulation to determine if the State Board of Social Services ("State Board") has the statutory authority to promulgate the attached proposed emergency regulation and if the proposed emergency regulation comports with applicable state law.

The Deficit Reduction Act of 2005 amended the work participation rates in the Temporary Assistance for Needy Families program. These changes in federal law include a requirement that by September 31, 2006, states shall establish procedures for determining "whether activities may be counted as work activities, how to count and verify reported hours of work, and who is a work-eligible individual." 42 U.S.C. § 607(i)(2). Pursuant to Virginia Code § 63.2-217 the State Board has the authority to promulgate regulations as may be necessary to carry out the purposes of Title 63.2 of the Code. It appears that the State Board has the authority to promulgate the proposed emergency 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.

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