



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: August 8, 2013

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

I have reviewed the above-referenced proposed fast track 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 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 Executive Order 14 (2010), and has not exceeded that authority. The changes to the regulation are updating terminology and definitions. There also is a change to make the regulation consistent with Virginia Code § 63.2-609.

It should be noted that if an objection to the use of the fast-track process is received within the public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the Department shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process set out in the APA.

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