



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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TO: MARGARET SCHULTZE, Commissioner
Virginia Department of Social Services

FROM: ERIC J. REYNOLDS *EJR*
Assistant Attorney General

DATE: January 20, 2016

SUBJECT: 22 VAC40-201 (Fair Hearings for Foster Care)

I am in receipt of the attached regulations regarding the state foster care program. You have asked the Office of the Attorney General to review and determine if the State Board of the Virginia Department of Social Services has the statutory authority to promulgate the proposed regulation and if the proposed regulation comports with applicable state and federal law.

This regulation is adding language and modifying some of the existing language to this Section - 22 VAC 40-201 - to comply with federal law in providing certain recipients of foster care services a fair hearings and appeals process when such services are denied or unreasonably delayed. This regulation replaces the emergency regulation that became effective on June 25, 2014 and which is set to expire on June 24, 2016.

It is my opinion that the State Board of DSS has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA") and has not exceeded that authority.

It is my view that this regulation is not exempt from but is subject to the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(a). If you have any questions or need additional information about these regulations, please contact me at 786-3450.

cc: Kim F. Piner, Esquire
Attachment