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**TO:** **KARIN CLARK**  
Virginia Department of Social Services

**FROM:** **MICHELLE A. L'HOMMEDIEU**   
Assistant Attorney General

**DATE:** **June 6, 2023**

**SUBJECT:** **Exempt Final Regulation – Amend Licensing Regulations for Provisional License, 22 VAC 40-80-110 (6243/10007)**

I am in receipt of the attached regulation to amend the licensing regulation for a provisional license for an assisted living facility, adult day care center, or child welfare agency and determine if the State Board of Social Services (“State Board”) has the statutory authority to promulgate this regulation and if it comports with applicable state law.

Virginia Code § 63.2-217 mandates that the State Board promulgate regulations that are necessary to carry out the provisions of Title 63.2. The proposed amendments to the regulation is necessary to reflect the changes to Virginia Code § 63.2-1250 by the adoption of Chapter 695 of the 2023 Acts of Assembly (Senate Bill 1508).

Based on my review, it is my opinion 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 (“APA”) and Executive Order 19 (2022), and has not exceeded that authority. To date, the Board has not yet acted on this regulation; and the Agency Background Document available on Town Hall reflects the anticipated future date of Board action. Based on the foregoing, it is my view that the amendments to this regulation are exempt from the procedures of Article 2 of the APA under Virginia Code § 2.2-4006(A)(4)(a). If you have any questions or need additional information about this regulation, please contact me at 786-6005.

cc: Kim F. Piner, Esq.  
Attachment

**Project 7563 - Final**

**Department of Social Services**

**Amend Licensing Regulations for Provisional Licenses**

**22VAC40-80-110. Provisional license.**

When a regular license expires and the applicant is temporarily unable to comply with the requirements of the regulations, the department may issue a provisional license for any period not to exceed ~~six~~ 12 months. A provisional license shall not be issued to a facility or agency immediately following a conditional license. At the conclusion of the provisional licensure period, the facility or agency must be in substantial compliance with licensing standards or be denied a license to continue operation.