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MEMORANDUM

FROM: Eric M. Lansing
Assistant Attorney General

TO: Dr. Karen Shelton, State Health Commissioner
Virginia Department of Health

DATE: September 9, 2025

RE: Review of Action 6865: “Amend Regulations after Enactment of Chapter 631 and 672 of the 2025 Acts of Assembly” (amending 12VAC5-590-10, 12VAC5-590-570)

In response to a request from the Virginia Department of Health, I have reviewed the above-referenced regulations, which the State Health Commissioner promulgated on behalf of the State Board of Health while the Board was not in session.

The State Board of Health has the authority to enact and amend these regulations, Va. Code § 32.1-170, and the State Health Commissioner is vested with the authority of the Board when the Board is not in session. Va. Code § 32.1-20. After reviewing the proposed amendments, it is my opinion that the State Health Commissioner has the authority to amend and reissue the above-referenced regulations. The proposed amendments do not appear to conflict with the Constitution of the United States or the Constitution of the Commonwealth of Virginia, nor do they appear to conflict with any federal or state law currently in effect.

Furthermore, these amendments are exempt from Article 2 of the Virginia Administrative Process Act because they are necessary to conform to changes in Virginia statutory law, and no discretion for the agency is involved in this regulation. *See* Va. Code § 2.2-4006(A)(4)(a).