



***COMMONWEALTH of VIRGINIA***  
***Office of the Attorney General***

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**MEMORANDUM**

**TO: BRIAN MCCORMICK**  
Regulatory Supervisor  
Virginia Department of Medical Assistance Services

**FROM: USHA KODURU**  
Assistant Attorney General

**DATE: May 25, 2010**

**SUBJECT: Exempt Final Regulations Making Technical Corrections to References to School Division Providers**

I have reviewed the attached exempt final regulations that make technical corrections to references to school division providers. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services (“DMAS”) has the legal authority to promulgate the regulation and if the regulation comports with state and federal law.

The Centers for Medicare and Medicaid Services directed DMAS to move all of its school health services to be covered under Early and Periodic Screening, Diagnosis, and Treatment services, located at 12 VAC 30-50-130. The proposed regulatory changes correct a previous oversight by removing references to school division providers from 12 VAC 30-130-10, 130-20, 130-30, and 130-40. Based on my review, it is my view that the Director of DMAS, acting on behalf of the Board of Medical Assistance Services, pursuant to Virginia Code §§ 32.1-324 and 325, has the authority to amend this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act (“APA”) and has not exceeded that authority.

Based on the foregoing, it is my view that the amendment of these regulations are exempt from the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A).

Brian McCormick  
May 25, 2010  
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If you have any questions, please contact me at 786-4074.

cc: Kim F. Piner, Esquire

Attachment