



COMMONWEALTH of VIRGINIA
Office of the Attorney General

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MEMORANDUM

TO: BRIAN MCCORMICK
Regulatory Supervisor
Department of Medical Assistance Services

FROM: JENNIFER L. GOBBLE
Special Counsel to DMAS

DATE: September 15, 2008

SUBJECT: Final Exempt Regulation – Public Participation Guidelines

I have reviewed the attached final exempt regulations that set forth the guidelines for public participation in the development, amendment or repeal of state regulations. 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 final exempt regulations and if such regulations comport with state and federal law.

Based on that review, it is my view that the Director, acting on behalf of the Board of Medical Assistance Services pursuant to Va. Code §32.1-324, has the authority to promulgate the attached regulations, subject to compliance with the requirements of Article 2 of the Administrative Process Act and has not exceeded that authority.

The public participation guidelines were developed as required by Chapters 321 and 575 of the 2008 Acts of Assembly, and in accordance with Virginia Code § 2.2-4007.02. Chapters 321 and 575 provide that by December 1, 2008, every agency that has the authority to promulgate regulations in Virginia “shall either (a) adopt the model public participation guidelines [developed by the Department of Planning and Budget] or (b) if significant additions or changes are proposed, promulgate the model public

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participation guidelines with the proposed changes as fast-track regulations” Based on the foregoing, it is my view that the promulgation of these amendments is exempt from the procedures of Article 2 of the Administrative Process Act pursuant to Virginia Code §2.2-4006(A)(4)(a).

If you have any questions, please contact me at 786-1840.

cc: Kim F. Piner
Senior Assistant Attorney General