



COMMONWEALTH of VIRGINIA

Office of the Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

Mark R. Herring
Attorney General

MEMORANDUM

TO: EMILY MCCLELLAN
Regulatory Supervisor
Department of Medical Assistance Services

FROM: JENNIFER L. GOBBLE 
Assistant Attorney General

DATE: June 9, 2015

SUBJECT: Emergency Regulations (REVISED) - GAP Demonstration Waiver for
Individuals with Serious Mental Illness

I have reviewed the emergency regulations that would amend the current emergency regulations implementing a demonstration waiver for the Governor's Access Plan ("GAP") for the Seriously Mentally Ill. The 2015 *Acts of Assembly*, Chapter 665, Item 301.LLLL.1 directed the Department of Medical Assistance Services ("DMAS") to amend the GAP demonstration waiver by modifying the income eligibility level and the list of benefits provided.

Based on my review, it is this Office's view that the Director of DMAS, acting on behalf of the Board of Medical Assistance Services pursuant to Virginia Code § 32.1-324, has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Virginia Administrative Process Act, and has not exceeded that authority. The amendments to the initial emergency regulations will enable the Director to comply with the legislative mandate set out in the 2015 *Acts of Assembly*, Chapter 665, Item 301.LLLL.1.

The authority for this emergency action is found in Virginia Code § 2.2-4011(C), which provides that during the 18-month period for emergency regulations, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulations. Any such additional emergency regulations shall not be effective beyond the 18-month period from the effective date of the initial emergency regulations.

In accordance with Virginia Code § 2.2-4012, the emergency regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations. If the Department intends to continue regulating the subject matter beyond the 18-month period from the effective date of the initial emergency regulations, it will be necessary to replace the

emergency regulations with regulations duly promulgated under Article 2 of the APA. A Notice of Intended Regulatory Action relating to the proposed replacement regulations must be filed with the Registrar within 60 days of the effective date of the emergency regulations. The proposed regulations must be filed with the Registrar within 180 days after the effective date of the emergency regulations. Va. Code § 2.2-4011(C).

If you have any questions or need any additional information, please feel free to contact me at 786-4905.

cc: Kim F. Piner
Senior Assistant Attorney General