COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: **VICTORIA P. SIMMONS**
Regulatory Coordinator
Department of Medical Assistance Services

FROM: **KIM F. PINER**
Special Counsel to the Department of Medical Assistance Services

DATE: **May 29, 2003**

SUBJECT: **Emergency Regulations Concerning School Health Services and Modified Fee-for-Service Reimbursement for School Division Providers**

I have reviewed the attached emergency regulations concerning school health services. Based on that review, it is my view that the Director, pursuant to Executive Order 21(02) and Virginia Code § 32.1-324(C), and acting on behalf of the Board of Medical Assistance Services, has the statutory authority to promulgate the emergency regulations, and that the regulations comport with the applicable state and/or federal law.

Item 325EEE of the 2003 Appropriation Act provides: "The Department of Medical Assistance Services shall have the authority to amend the State Plan for Medical Assistance to cover additional medical services for special education students and to revise referral and prior authorization requirements for services provided to special education students by school division providers. The Department shall have authority to enact emergency regulations under ə 2.2-4011 of the Administrative Process Act, to effect this provision." Item 325 XX of the 2003 Appropriation Act provides: "The Department of Medical Assistance Services shall amend its State Plan for Medical Assistance to cover, as a medical service, school-based transportation for

children in special education. The transportation covered is from home to school and the return trip or transportation to a non-school location on days the child has a covered service such as physical therapy. This change is subject to approval by the Centers for Medicare and Medicaid Services. The Department's payment for transportation will be the federal share of the payment only, which is consistent with the Department's coverage of other services for children in special education. School divisions shall document to the Department the non-federal matching funds. The Department shall promulgate emergency regulations to implement this amendment within 280 days or less from the enactment of this act." Item 325HHH of the 2003 Appropriation Act provides: "The Department of Medical Assistance Services shall have the authority to amend the State Plan for Medical Assistance to establish separate payment rates for state and local government providers based on an evaluation of costs incurred. The Department shall have authority to enact emergency regulations under ɜ 2.2-4011 of the Administrative Process Act, to effect this provision." Without emergency regulations, the Department would be unable to meet the time frame established by the General Assembly. As such, these regulations may be adopted without public comment with the prior approval of the Governor.

Accordingly, with the prior approval of the Governor, these regulations qualify for the "emergency" exemption from Article 2 requirements. Please be advised, however, that under Virginia Code § 2.2-4011(A), the Department must state in writing the nature of and necessity for such emergency action. In addition, the regulations shall be effective for no more than twelve months. If the Department intends to continue regulating the subject matter governed by this emergency regulation beyond 12 months, it will be necessary to replace these emergency regulations with regulations duly promulgated under Article 2. 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, and the proposed replacement regulations must be filed with the Registrar within 180 days after the effective date of the emergency regulations.

If you have any questions, please call me at 786-3524.

c: Siran S. Faulders, Esquire