



COMMONWEALTH of VIRGINIA
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MEMORANDUM

TO: BRIAN MCCORMICK
Regulatory Coordinator
Virginia Department of Medical Assistance Services

FROM: USHA KODURU
Assistant Attorney General

DATE: February 3, 2005

SUBJECT: Fast Track Regulation to Increase DSH Limit for Fiscal Year 2005

I am in receipt of the attached regulation to temporarily increase the disproportionate share hospital (DSH) supplemental payment limit for Medicaid hospitals. 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.

Based on that review, it is my view that the Director, acting on behalf of the Board pursuant to Va. Code § 32.1-324, has the authority to promulgate these amendments to the State Plan, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority. These regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to make changes to the regulations to allow DMAS to make the largest extra payment, up to 175% of the amount set forth in the Benefits and Improvement and Protection Act, in Fiscal Year 2005 in order to increase federal revenue for hospitals that serve a disproportionately large number of Medicaid and uninsured patients. This increase is effective until June 30, 2005.

Because this regulation will amend the State Plan, approval by CMS will also be required.

Brian McCormick
February 3, 2005
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If you have any questions or need additional information, please contact me at 225-2741.

cc: Kim F. Piner, Esquire

Attachment