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TO: SYREETA B. STEWART
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Department of Medical Assistance Services

FROM: JENNIFER L. GOBBLE 
Senior Assistant Attorney General

DATE: June 18, 2026

SUBJECT: Fast-Track Regulations: Post Eligibility Special Earnings for Developmental Disabilities Waivers

I have reviewed the above-referenced fast-track regulatory action amending existing regulations to adjust the post eligibility special earnings allowance for individuals enrolled in the Community Living, Family and Individual Support, and Building Independence waiver programs (Medicaid Developmental Disabilities Waivers) to incentivize employment for individuals receiving waiver services.

The special earnings allowance for waiver enrollees allows a percentage of earned income to be disregarded when calculating an individual's contribution to the cost of their waiver services when earning income. The regulatory amendments are in accordance with requirements in Chapter 725, Item 288.III of the 2025 *Acts of Assembly* directing DMAS to lower the number of work hours to provide that for waiver enrollees employed *at least four hours but less than 20 hours* per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 200% of Supplemental Security Income.

Based on my review, it is this Office's view that the Director of the Department of Medical Assistance Services (DMAS or the Department), acting on behalf of the Board of Medical Assistance Services pursuant to Virginia Code § 32.1-324, has the authority to amend these regulations, subject to compliance with the provisions of Article 2 of the Virginia Administrative Process Act, and has not exceeded that authority. Please be aware that this review

is based solely upon whether DMAS has the legal authority to amend these regulations, not the appropriateness of whether they should be amended pursuant to the fast-track process.

Pursuant to Virginia Code § 2.2-4012.1, if an objection to the use of the fast-track process is received within the public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you have any questions or need any additional information about this regulatory action, please contact me at 804-786-2071.

cc: Kim F. Piner
Senior Assistant Attorney General/Section Chief

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