



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*  
*Richmond 23219*

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Attorney General

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**MEMORANDUM**

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

**FROM: PAIGE S. FITZGERALD**  
Special Counsel to DMAS

**DATE: March 26, 2004**

**SUBJECT: Proposed Regulations concerning Drug Utilization Review**

I am in receipt of the proposed regulations concerning changes to the regulations governing the drug utilization review ("DUR") program. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services has the legal authority to promulgate the attached proposed regulations and to identify any federal or state mandates regarding this regulation.

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 permanent the regulations concerning the DUR. The changes were first made by the promulgation of emergency regulations, and were approved by this Office in a memorandum, dated November 4, 2003.

The authority for both the previously promulgated emergency regulations and these proposed regulations is based in federal law, specifically section 1927(g) of the Social Security

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Act (42 U.S.C. § 1396r-8(g)), which requires DMAS to have a DUR. These regulations make changes to the current DUR program to enhance its ability to protect and enhance Medicaid recipients' health.

If you have any questions or need any additional information, please feel free to call me at 786-0095.

cc: Kim F. Piner, Esquire