



COMMONWEALTH of VIRGINIA
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MEMORANDUM

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

FROM: **REATHA B. KAY**
Special Counsel to DMAS

DATE: **January 6, 2005**

SUBJECT: Proposed Fast-Track Regulations concerning Nursing Home Rate Increase

I have reviewed the attached proposed regulations regarding nursing home reimbursement changes that would increase the total per diem payment to nursing homes by \$3.00 per recipient per day effective from July 1, 2005 through June 30, 2006, and, effective July 1, 2006, increase the direct care and indirect care ceilings by \$3.00 in the aggregate, adjusted for one year's inflation.

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. However, 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 Department of Medical Assistance Services 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 set out in this article with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

These regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to make the changes to the regulations governing the nursing facility reimbursement formula. The authority for these proposed regulations derives from Item 326 YY of the 2004 Acts of Assembly, Chapter 4, which mandated these changes. Item 326 YY states that "[t]he Department of Medical Assistance Services shall have the authority to amend the State Plan for Medical Assistance Services governing Medicaid reimbursement for nursing facilities to increase the total per diem payment to each nursing home by \$3 per day, effective July 1, 2005. This increase in the total per diem payment shall cease, effective July 1, 2006, at which time an increase of \$3 per

Brian McCormick

January 6, 2005

Page 2

day, adjusted for one year's inflation, shall be allocated between the direct and indirect care ceilings for nursing facilities.”

If you have any questions or need any additional information, please feel free to call me at 371-8721.

cc: Kim F. Piner, Esquire

Attachment