



COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

William C. Mimms
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991

MEMORANDUM

TO: BRIAN MCCORMICK
Regulatory Supervisor
Department of Medical Assistance Services

FROM: USHA KODURU
Assistant Attorney General

DATE: August 21, 2009

SUBJECT: Emergency Regulation to amend the Mental Retardation/Intellectual Disability Waiver

I have reviewed the attached emergency regulations to update the terms of the Mental Retardation/Intellectual Disability Waiver to comply with the Centers for Medicare and Medicaid's waiver renewal process.

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 regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA") and has not exceeded that authority.

The authority for this emergency action is found in Va. Code § 2.2-4011. The amendments to the regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to comply with Item 306 PPP of the 2009 Appropriations Act.

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 Va. Code § 2.2-4011(B), the Department must state in writing the nature of and necessity for such

Brian McCormick

August 21, 2009

Page 2

emergency action, and this appears to have been accomplished in the “Agency Background Document.” As the Department intends to continue regulating the subject matter governed by this emergency regulation beyond twelve months, it is necessary to replace these emergency regulations with regulations duly promulgated under Article 2 of the APA. A Notice of Intended Regulatory Action relating to the proposed replacement regulations must be filed with the Registrar within sixty days of the effective date of the emergency regulations, and appears to already have been so filed at the same time as the emergency regulations. 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 or need any additional information, please call me at 786-4074.

cc: Kim F. Piner

Attachment