



COMMONWEALTH of VIRGINIA

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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: May 7, 2004

SUBJECT: Exempt Final Regulations concerning Marriage and Family Therapists as Independently Enrolled Medicaid Providers

I have reviewed the above-referenced final exempt regulation concerning the enrollment of marriage and family therapists as Medicaid providers.

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 this change to the State plan, without complying with the requirements of Article 2 of the Administrative Process Act and has not exceeded that authority.

The amendments to the regulations add marriage and family therapists as independently enrolled Medicaid providers pursuant to the following mandate of the 2004 General Assembly: [w]hen the services provided for by such plan are services which a marriage and family therapist . . . is licensed to render in Virginia, the Director shall contract with any duly licensed marriage and family therapist . . . who makes application to be a provider of such services, and thereafter shall pay for covered services as provided in the state plan. The Board shall promulgate regulations which reimburse licensed marriage and family therapists . . . at rates based upon reasonable criteria, including the professional credentials required for licensure.” (Chapter 125 of the 2004 Acts of Assembly.) In addition, the regulations set forth a payment methodology for these newly-added providers, as required by the preceding mandate, consistent with that already used for similarly situated providers, including licensed clinical social workers, professional

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counselors, and clinical nurse specialists—psychiatric. Based on the foregoing, it is my view that the promulgation of these amendments is exempt from the procedures of Article 2 of the Administrative Process Act pursuant to Virginia Code §2.2-4006(A)(4)(a).

Finally, these amendments also remove a special exemption related to community mental health clinics, at 12 VAC 30-50-180(C), which expired on July 5, 2002. This change appears to be exempt from the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(3).

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