



COMMONWEALTH of VIRGINIA
Office of the Attorney General

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MEMORANDUM

TO: BRIAN MCCORMICK
Regulatory Supervisor
Department of Medical Assistance Services

FROM: JENNIFER L. GOBBLE
Assistant Attorney General

DATE: December 5, 2012

SUBJECT: Fast Track Regulation to Repeal the HIV/AIDS Waiver Regulations

I am in receipt of the attached fast-track regulation proposing to repeal the agency's regulations for its HIV/AIDS Waiver.

You asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services ("DMAS") has the legal authority to promulgate the regulation and if the regulation comports with state and federal law. Based on that review, it is my view that the Director, acting on behalf of the Board of Medical Assistance Services pursuant to Virginia Code §§ 32.1-324 and 325, has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act, and has not exceeded that authority.

This regulatory action will comply with the legislative mandate set out in the 2012 Acts of Assembly, Ch. 3, Item 307 JJJ, which provides DMAS with authority to amend the Elderly or Disabled with Consumer Direction Waiver to incorporate the HIV/AIDS Waiver, and directs that the HIV/AIDS Waiver cease as of June 30, 2011.

Pursuant to Va. 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, DMAS 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 Article 2 of the Administrative Process Act with the

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initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you have any questions or need additional information about these regulations, please contact me at 786-4905.

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

Attachment