



COMMONWEALTH of VIRGINIA
Office of the Attorney General

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MEMORANDUM

TO: BRIAN MCCORMICK
Regulatory and Manual Section Manager
Department of Medical Assistance Services

FROM: ELIZABETH A. MCDONALD
Special Counsel to DMAS

DATE: February 24, 2010

SUBJECT: Final Exempt Regulations – Increase Resource Limits for Medicare Savings Program Groups; 12 VAC 30-30-10 and 12 VAC 30-40-170

I have reviewed the attached final exempt regulations that would increase the resource limits for the Medicare Savings Programs. You have asked the Office of the Attorney General to review and determine if DMAS has the legal authority to promulgate the final exempt regulations and if they comport with state and federal law.

Based on that review, it is this Office's view that DMAS has the authority, subject to compliance with the provisions of Article 2 of the Administrative Process Act (APA), and has not exceeded that authority.

The regulations are required by the Medicare Improvements for Patient and Providers Act of 2008 (MIPPA), P.L. 110-275, which amends 42 U.S.C. § 1395d(p)(1)(C). It is my view that the promulgation of these regulations are exempt from the procedures of Article 2 of the Administrative Process Act pursuant to Virginia Code § 2.2-4006(A)(4)(c).

If you have any questions, please feel free to contact me at 786-7363.

cc: Kim F. Piner
Senior Assistant Attorney General