



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

MEMORANDUM

TO: **BRIAN MCCORMICK**
Regulatory Supervisor
Department of Medical Assistance Services (DMAS)

FROM: **MARY-GRACE MENDOZA** mm
Assistant Attorney General

DATE: **October 19, 2012**

SUBJECT: **Fast Track Submission - Part D Coverage of Benzodiazepines and Barbiturates (12 VAC 30-50-35 and 12 VAC 30-50-75)**

This memorandum responds to your request that this Office review the amendments to 12 VAC 30-50-35 and 12 VAC 30-50-75, "Part D Coverage of Benzodiazepines and Barbiturates," which eliminate full benefit dual eligible individuals' (i.e., individuals eligible for both Medicare and Medicaid) coverage for the following two classes of drugs: (1) benzodiazepines for all conditions; and (2) barbiturates for patients with a diagnosis of epilepsy, cancer or a chronic mental health disorder.

Based on my 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 being amended to eliminate additional Medicaid coverage of the drugs as they are now being covered under Medicare Part D. Section 175 of the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA) was amended to include Medicare Part D coverage beginning January 1, 2013 for benzodiazepines and for barbiturates when used in the treatment of epilepsy, cancer, or a chronic mental health disorder. Accordingly, it is my view that this action was properly promulgated under the fast-track rulemaking process pursuant to Virginia Code Section 2.2-4012(1).

Please call me at (804) 786-6004 if you have any questions regarding this memorandum.
Thank you.

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