



COMMONWEALTH of VIRGINIA

Office of the Attorney General

202 North 9th Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

Mark R. Herring
Attorney General

MEMORANDUM

TO: **EMILY MCCLELLAN**
Regulatory Supervisor
Department of Medical Assistance Services

FROM: **JENNIFER L. GOBBLE** 
Assistant Attorney General

DATE: **November 22, 2016**

SUBJECT: Fast-Track Regulations – Modified Adjusted Gross Income (MAGI) Changes

I have reviewed the fast-track regulations that will implement federal requirements in the Affordable Care Act to use the Modified Adjusted Gross Income (“MAGI”) methodology for determining income eligibility for medical assistance and to cover foster care children between the ages of 18 and 26 who were enrolled in Medicaid and receiving foster care upon attaining age 18 and subsequently aged out of the foster care program. The changes were approved by the Centers for Medicare and Medicaid Services and currently are in place as required by federal regulations.

Based on my 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, has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act, and has not exceeded that authority.

Please be aware that this review is based solely upon whether DMAS has the legal authority to promulgate these regulations, not the appropriateness of whether it should be promulgated pursuant to the fast-track process. In accordance with Virginia 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 with the initial publication of the fast-track regulations serving as the Notice of Intended Regulatory Action.

If you have any questions, please feel free to call me at 786-2071.

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