



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: **March 26, 2004**

SUBJECT: **Final Regulations concerning Limits on Patient Pay Amounts for Non-Covered Medicaid Services**

I have reviewed the final regulations concerning limits on patient pay amounts for non-covered Medicaid services. As noted in my previous memorandum dated July 21, 2003, it is this Office's view that the Director, acting on behalf of the Board 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.

Based on the explanation contained in the attached regulatory review summary for these final regulations, it can be argued that the changes to the proposed regulations, which are incorporated in the attached final regulations, are not changes with "substantial impact," which could necessitate an additional comment period. The changes are essentially technical in nature, and/or they clarify certain issues raised by the Centers for Medicare and Medicaid Services to the proposed regulations.

Please note that Virginia Code § 2.2-4013(B) requires that all changes to the proposed regulations be highlighted in the final regulations, and it appears that this requirement has been fulfilled. Also, pursuant to § 2.2-4013(C), if the Governor finds that one or more changes with substantial impact have been made to the proposed regulation, he *may* require DMAS to provide an additional thirty days to solicit additional public comment on the changes. In addition, Virginia Code § 2.2-4007(K) requires the agency to solicit additional public comment, if it receives requests from at least twenty-five persons for an opportunity to submit oral and written comments on the changes to the regulation and if one or more changes with substantial impact were made to the proposed regulation.

Victoria P. Simmons

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If you have any questions or need any additional information, please feel free to call me.

cc: Kim F. Piner