



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** *EAM*
Special Counsel to DMAS

DATE: **November 5, 2008**

SUBJECT: **Emergency Regulations concerning MCO Coverage for FAMIS Newborns**

I have reviewed the attached emergency regulations that would provide that infants born to Family Access to Medical Insurance Security (FAMIS) recipients receive health care coverage immediately following birth.

Based on that review, it is this Office's view that the Director of the Department of Medical Assistance Services ("DMAS"), acting on behalf of the Board of Medical Assistance Services pursuant to Va. 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.

The authority for this emergency action is found in Va. Code § 2.2-4011, which provides that an "emergency situation" is a "situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment..." The amendments to the regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to comply with Chapter 879, Item 305(E) of the 2008 Appropriations Act.

Accordingly, with the prior approval of the Governor, these regulations will qualify for the “emergency” exemption from Article 2 requirements. Please be advised, however, that under Va. Code § 2.2-4011(A), the Department must state in writing the nature of and necessity for such emergency action, and this appears to have been accomplished in the “Agency Background Document.” In addition, the regulations shall be effective for no more than twelve months. As the Department intends to continue regulating the subject matter governed by this emergency regulation beyond 12 months, it will be necessary to replace these emergency regulations with regulations duly promulgated under Article 2 of the APA. A Notice of Intended Regulatory Action relating to the proposed replacement regulations must be filed with the Registrar within 60 days of the effective date of the emergency regulations. The proposed replacement regulations must be filed with the Registrar within 180 days after the effective date of the emergency regulations.

If you have any questions or need any additional information, please feel free to contact me at 786-3890.

cc: Kim F. Piner
Senior Assistant Attorney General