



COMMONWEALTH of VIRGINIA
Office of the Attorney General

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MEMORANDUM

TO: BRIAN MCCORMICK
Regulatory Supervisor
Department of Medical Assistance Services

FROM: Usha Koduru
Assistant Attorney General
Office of the Attorney General

DATE: September 16, 2011

SUBJECT: Emergency Regulations to Implement Early Intervention Case Management Services

I have reviewed the attached emergency regulations to implement case management services for children under the age of three in accordance with Part C of the Individuals with Disabilities Education Act. Based on that review, it is my view that the Director, acting on behalf of the Board pursuant to Virginia Code §§ 32.1-324 and 325 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. Chapter 890, Item 297 UUUU of the 2011 Acts of Assembly grants DMAS the authority to promulgate these regulations. Accordingly, these regulations qualify for the "emergency" exemption from Article 2 requirements. A Notice of Intended Regulatory Action relating to the proposed replacement regulations must be filed with the Registrar within sixty days of the effective date of the emergency regulations, and appears to already have been so filed at the same time as the emergency regulations. The proposed replacement regulations must be filed with the Registrar

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within 180 days after the effective date of the emergency regulations. This regulation will amend the State Plan; therefore, approval by the Centers for Medicare and Medicaid Services also will be required.

If you have any additional questions, please contact me at 786-4074.

cc: Kim F. Piner, Esquire

Attachment