



COMMONWEALTH of VIRGINIA

*Office of the Attorney General
Richmond 23219*

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MEMORANDUM

TO: RENEE WHITE
Regulatory Coordinator
Virginia Department of Medical Assistance Services

FROM: USHA KODURU
Assistant Attorney General

DATE: September 14, 2005

SUBJECT: Proposed Regulation for the Treatment of Annuities in Medicaid Eligibility Determination

I am in receipt of the attached proposed regulation to provide additional requirements in the treatment of annuities as assets in determining eligibility for Medicaid. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services ("DMAS") has the legal authority to promulgate the proposed regulation and if the proposed regulation comports with state and federal law.

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

Pursuant to Virginia Code §§ 32.1-324, 32.1-325, which grants to the Board of Medical Assistance Services the authority to administer and amend the plan for Medical Assistance and authorizes the Director of DMAS to administer and amend the plan for Medical Assistance according to the Board's requirements. The authority for these proposed regulations derives from sections 1917(c) and (d) of the Social Security Act, which allow states to establish rules regarding the transfer of assets.

Renee White
September 14, 2005
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If you have any questions, please feel free to contact me at 786-4905.

cc: Kim F. Piner, Esquire

Attachment