



COMMONWEALTH of VIRGINIA
Office of the Attorney General

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MEMORANDUM

TO: RENE E WHITE
Regulatory Coordinator
Department of Medical Assistance Services

FROM: REATHA B. KAY
Special Counsel to DMAS

DATE: June 29, 2005

**SUBJECT: Final Exempt Regulation Concerning Covering Non-Emergency
Transportation as a Medical Expense**

I have reviewed the attached final exempt regulation to cover non-emergency transportation as a medical expense.

Based on that review, it is my view that the Director, acting on behalf of the Board of Medical Assistance Services pursuant to Va. Code §32.1-324, has the authority to promulgate these amendments to the State Plan, subject to compliance with the requirements of Article 2 of the Administrative Process Act and has not exceeded that authority.

The amendments to the regulation would cover non-emergency transportation as a medical expense rather than as an administrative expense pursuant to Item 326(QQ) of the 2005 Appropriation Act, which states, in part, that DMAS “shall implement the necessary regulatory changes to cover non-emergency transportation as a medical service rather than an administrative service. The Department shall promulgate regulations to become effective within 280 days or less from the enactment of this act . . .” Based on the foregoing, it is my view that the promulgation of these amendments is exempt from the procedures of Article 2 of the Administrative Process Act pursuant to Virginia Code §2.2-4006(A)(4)(a).

Renee White
June 29, 2005
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If you have any questions, please contact me at 786-1841.

cc: Kim F. Piner, Esquire

Attachment