



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

DATE: May 15, 2008

SUBJECT: Emergency Regulations Concerning Prior Authorization of Intensive In-Home Services

I have reviewed the attached emergency regulations concerning prior authorization of intensive in-home services.

Based on that review, it is my view that the Director, acting on behalf of the Board 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 (“APA”) and has not exceeded that authority.

The authority for this emergency action is found in Va. Code § 2.2-4011. The amendments to the regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to comply with Item OO of the 2008 Appropriations Act.

Accordingly, with the prior approval of the Governor, these regulations qualify for the “emergency” exemption from Article 2 requirements. Please be advised, however, that under Va. Code § 2.2-4011(B), 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.” As the Department intends to continue regulating the subject matter governed by

Brian McCormick
May 15, 2008
Page 2

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 call me at 786-4074.

cc: Kim F. Piner, Esquire

Attachment