



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*  
**Richmond 23219**

William C. Mimms  
Attorney General

900 East Main Street  
Richmond, Virginia 23219  
804-786-2071  
FAX 804-786-1991

**MEMORANDUM**

**TO: BRIAN MCCORMICK**  
Regulatory Supervisor  
Department of Medical Assistance Services

**FROM: USHA KODURU**  
Assistant Attorney General

**DATE: June 8, 2009**

**SUBJECT: Emergency Regulations Concerning Outpatient Rehabilitation Agency and Long Stay Hospital Reimbursement**

I have reviewed the attached emergency regulations concerning outpatient rehabilitation agency and long stay hospital reimbursement.

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 Items 306 XX and 306.BBB of the 2009 Act of the Assembly.

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 this

Brian McCormick

June 8, 2009

Page 2

emergency regulation beyond twelve months, it is 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 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 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.