



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

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**MEMORANDUM**

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

**FROM: USHA KODURU**  
Assistant Attorney General

**DATE: August 12, 2009**

**SUBJECT: Final Exempt Regulations on Managed Care Provider Exclusions**

I am in receipt of the attached regulations relating to managed care provider exclusions. The regulations will prohibit managed care organizations from having affiliations with individuals who have been debarred, suspended or otherwise excluded from federal procurement or assistance and benefit activities and programs. 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 final exempt regulation and if it comports with state and federal law.

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 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.

This regulation incorporates into the Virginia Administrative Code language issued by the Centers for Medicare and Medicaid Services to be included in the State Plan. The language establishes DMAS’ compliance with § 1932(d)(1) of the *Social Security Act* and 42 CFR §

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438.610. Based on the foregoing, it is my view that the promulgation of this regulation is exempt from the procedures of Article 2 of the Administrative Process Act pursuant to Virginia Code §2.2-4006(A)(4)(a). Because these regulations will amend the State Plan, CMS approval also will be required.

If you have any questions, or need additional information about these regulations, please feel free to contact me at 786-4074.

cc: Kim F. Piner  
Senior Assistant Attorney General