



COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

Jerry W. Kilgore
Attorney General

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

804-371-8947 TDD

MEMORANDUM

TO: David E. Suttle, M.D.
Office of Family Health Services
Virginia Department of Health

FROM: Robin V. Kurz
Special Counsel

DATE: May 27, 2005

SUBJECT: State Plan for Provision of Children's Specialty Services
12 VAC 5-191 et seq.

I have reviewed the draft regulations for the State Plan for Provision of Children's Specialty Services in 12 VAC 5-191 *et seq.* and have the following comments:

1. Some of the definitions do not appear to be used at all outside the definitions section. These include CCC Inter-enter Work Group, CCC Program Director, CDS, Family-centered care, Information and referral services, and Transition services. Other definitions are used only once, and it may make more sense to just explain the term where it is used. I also question the definition and use of the term "culturally competent" with respect to some of the services? Does not VDH always make this its mission? It does not seem that VDH ever offers or accepts cultural incompetence.

2. In 12 VAC 5-191-20, Va. Code § 32.1-66 also provides for treatment to the medically indigent. Va. Code § 32.1-69.1 governs the Virginia Congenital Anomalies Reporting and Education System and states that "the Board shall promulgate such regulations as may be necessary to implement this reporting and education system." I did not locate separate regulations for this program. If there are not any it seems these regulations would have to be more specific to encompass the details mentioned in Va. Code § 32.1-69.1.

3. In 12 VAC 5-191-40, it appears that Va. Code § 32.1-67 encompasses the provision of food products to pregnant women. Also, section C(3) refers only to children, while it appears that adults are covered in a couple of situations.

4. I am confused by the second paragraph of 12 VAC 5-191-70, which seems to require that applicants for financial assistance demonstrate that they are not eligible for state and federal medical assistance programs. 12 VAC 5-191-110 states that Medicare and Medicaid are the payers of last resort.

5. 12 VAC 5-191-90, which governs privacy, could also mention Va. Code §§ 32.1-64.2, 32.1-67.1, 32.1-69, and 32.1-69.2. Also, Title V's regulations contain a privacy provision in 42 C.F.R. § 51a.6. In addition, the HIPAA privacy regulations are contained in 45 C.F.R. Part 164. The reference to the Virginia Public Records Act, 42.1-76-91, does not seem necessary. Also, the correct citation to the preceding section is 32.1-127.1:04.

6. 12 VAC 5-91-90(C) does not seem necessary. Surveillance and investigation might also include Va. Code §§ 32.1-40 and 32.1-41.

7. The contents of 12 VAC 5-191-100 do not appear to be necessary in regulations.

8. In 12 VAC 5-191-120, what is a "Demonstration Project?"

9. Is 12 VAC 5-191-130 consistent with 12 VAC 5-110(D)(1)?

10. Are the contents of 12 VAC 5-191-140 necessary in regulations? The same is true for 12 VAC 5-191-150.

11. Are the "reasons for closure of a client to the program" set forth in federal law or guidelines? 12 VAC 5-191-170. If it is VDH guidelines, this should be spelled out in the regulations. Are the last two sentences of 12 VAC 5-191-170 internally consistent? I think you intend to be able to terminate services after notice and a good faith attempt to secure alternate care, but does this language also require a determination that termination is not detrimental to the client's health?

12. 12 VAC 5-191-210 says the guidance document will address financial requirements for eligibility. Don't the eligibility regulations apply, and if not, shouldn't the basic framework be included in these regulations?

13. 12 VAC 5-191-300 references Va. Code § 32.1-69.1. As stated previously, shouldn't there be regulations on this also?

Please feel free to call me with any questions at 786-8789.

