



COMMONWEALTH of VIRGINIA
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MEMORANDUM

TO: BRIAN C. MCCORMICK
Regulatory Supervisor
Virginia Department of Medical Assistance Services

FROM: USHA KODURU
Assistant Attorney General

DATE: May 5, 2009

SUBJECT: Final Exempt Regulation to Decrease the Pharmacy Dispensing Fee

I have reviewed the attached final exempt regulation to decrease the dispensing fee paid by the Department of Medical Assistance Services (“DMAS”) to pharmacy providers for dispensing prescription drugs. You asked the Office of the Attorney General to review and determine if DMAS has the legal authority to promulgate the final exempt regulation and if the final exempt regulation comports with state and federal law.

It is this Office’s view that DMAS has the authority to promulgate the final exempt regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Orders 36 (2006) and 58 (1999), and has not exceeded that authority. The authority for this regulation is derived from the 2009 Appropriations Act, Item 306 WW, which mandates DMAS “shall amend the State Plan for Medical Assistance to decrease the dispensing fee paid to pharmacists from \$4.00 to \$3.75 per prescription per month.” Based on the foregoing, it is my view that the promulgation of this amendment is exempt from the procedures of Article 2 of the Administrative Process Act pursuant to Virginia Code § 2.2-4006(A)(4)(a).

If you have any questions about this final exempt regulation, please contact me at (804) 786-4074.

Attachments