



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

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**MEMORANDUM**

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

**FROM: USHA KODURU**  
Assistant Attorney General

**DATE: October 15, 2010**

**SUBJECT: Exempt Final Regulation to Modify the Pharmacy Reimbursement Methodology**

I have reviewed the attached exempt final regulation that will reinstate the maximum reimbursement for pharmaceutical products from the current pricing methodology of the estimated acquisition cost equaling to the Average Wholesale Price (“AWP”) minus 13.1% to AWP minus 10.25%. This is a result of the increased Federal Match percentage being provided to the Commonwealth through June 30, 2011. 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 amend the regulation and if the regulation comports with state and federal law.

Item 297.SSS of the 2010 Virginia Appropriations Act directs DMAS to amend this regulation. Based on my review, it is my view that the Director of DMAS, acting on behalf of the Board of Medical Assistance Services, pursuant to Virginia Code §§ 32.1-324 and 325, has the authority to amend this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act (“APA”) and has not exceeded that authority.

Brian McCormick  
October 15, 2010  
Page 2

Based on the foregoing, it is my view that the amendment of this regulation is exempt from the procedures of Article 2 of the APA pursuant to Va. Code § 2.2-4006(A). This regulation will amend the State Plan; therefore, approval by CMS will also be required.

If you have any questions, please contact me at 786-4074.

cc: Kim F. Piner, Esquire

Attachment