



COMMONWEALTH of VIRGINIA


Office of the Attorney General

Mark R. Herring
Attorney General

202 North Ninth Street
Richmond, Virginia 23219
804-786-2071
Fax 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

MEMORANDUM

TO: EMILY MCCLELLAN
Regulatory Supervisor
Department of Medical Assistance Services

FROM: ELIZABETH M. GUGGENHEIM 
Assistant Attorney General

DATE: May 17, 2018

SUBJECT: Emergency regulations regarding the CCC Plus Waiver program
(12 VAC 30-120-900 et sq., 12 VAC 30-90-1700 et seq.)

I have reviewed the emergency regulations that will establish a program that will include all remaining Medicaid populations and services, including long-term care and home and community based waiver services into managed care. The regulations will also allow the Department to include those populations previously served under the Elderly and Disabled with Consumer Direction (EDCD) and Technology Assistance waivers through managed care as part of the CCC Plus program. Based on that review, it is this Office's view that the Director of the Department of Medical Assistance Services ("DMAS"), acting on behalf of the Board of Medical Assistance Services pursuant to Virginia 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 Virginia Code § 2.2-4011, which provides that an "emergency situation" is a "situation in which Virginia statutory law, the Virginia appropriations act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment..." The regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to comply with Item 306.JJJ(3) of the 2016 *Acts of the Assembly*.

Accordingly, with the prior approval of the Governor, these regulations will qualify for the "emergency" exemption from Article 2 requirements. Please be advised, however, that under Virginia Code §2.2-4011(A), the Department must state in writing the nature of and necessity for such emergency actions, and this appears to have been accomplished in the "Agency Background Document." In addition, the regulations shall be effective for no more than 12 months. If the Department intends to continue regulating the subject matter governed by this emergency regulation

beyond 12 months, it will be 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 Register within 60 days of the effective date of the emergency regulations. The proposed regulations must be filed with the Register within 180 days after the effective date of the emergency regulations.

If you have any questions or need any additional information, please feel free to contact me at 786-2071.

cc: Kim F. Piner
Senior Assistant Attorney General