



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*  
*Richmond 23219*

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**MEMORANDUM**

**TO:** **VICTORIA P. SIMMONS**  
Department of Medical Assistance Services

**FROM:** **PAIGE S. FITZGERALD**  
Assistant Attorney General

**DATE:** March 6, 2003

**SUBJECT:** Proposed Regulations concerning Eligibility Conditions and Requirements:  
Methods for Counting Income and Resources

I am in receipt of your memorandum dated February 7, 2003, concerning certain amendments to regulations setting forth eligibility conditions and requirements. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services has the legal authority to promulgate the attached proposed regulations and to identify any federal or state mandates regarding this regulation.

Based on that review, it is my view that the Director, acting on behalf of the Board pursuant to Va. Code § 32.1-324, has the authority to promulgate these amendments to the State Plan, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority. These regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to clarify and correct certain eligibility conditions and requirements regarding methods for counting income and resources. Federal regulations, specifically 42 C.F.R. § 435.10, require that the State plan accurately specify the conditions of eligibility for individuals in each eligibility group covered by Medicaid. These amendments will ensure that DMAS' regulations and State plan satisfy this mandate.

If you have any questions, please feel free to call me at 786-3450.

Attachment

cc: Siran S. Faulders, Senior Assistant Attorney General