



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

MEMORANDUM

TO: VICTORIA P. SIMMONS
Regulatory Coordinator
Department of Medical Assistance Services

FROM: KIM F. PINER
Special Counsel to the Department of Medical Assistance Services

DATE: May 2, 2003

SUBJECT: Emergency Regulations Concerning Reasonable Limits on Amounts for Necessary Medical or Remedial Care Not Covered Under Medicaid

I have reviewed the attached emergency regulations concerning reasonable limits on amounts for necessary medical or remedial care not covered under Medicaid. Based on that review, it is my view that the Director, pursuant to Executive Order 21(02) and Virginia Code § 32.1-324(C), and acting on behalf of the Board of Medical Assistance Services, has the statutory authority to promulgate the emergency regulations, and that the regulations comport with the applicable state and/or federal law.

Item 325BBB of the 2003 Appropriation Act provides: "The Department of Medical Assistance Services shall amend its State Plan for Medical Assistance to set maximum amounts for non-covered medical services that can be allowed for nursing facility residents as adjustments to the patient pay responsibility. These maximum amounts shall not be lower than the highest amounts reimbursed by Medicare or Medicaid for the same non-covered medical service. Such amendments to the State Plan shall become effective within 280 days or less from the enactment of this act." Without emergency regulations, the Department would be unable to meet the time frame established by the General Assembly. As such, these regulations may be adopted without public comment with the prior approval of the Governor.

Accordingly, with the prior approval of the Governor, these regulations 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 action. In addition, the regulations shall be effective for no more than twelve months. As 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. A Notice of Intended Regulatory Action relating to the proposed replacement regulations must be filed with the Registrar within 60 days of the effective date of the emergency regulations, and the proposed replacement regulations must be filed with the Registrar 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 call me at 786-3524.

c: Siran S. Faulders, Esquire

