



COMMONWEALTH of VIRGINIA
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MEMORANDUM

TO: **BRIAN MCCORMICK**
Regulatory and Manual Manager
Department of Medical Assistance Services

FROM: **REATHA B. KAY**
Special Counsel to DMAS

DATE: **March 16, 2005**

SUBJECT: **Emergency Regulations Concerning Modifications of Indirect Medical Education Payments (“IME”)**

I have reviewed the attached emergency regulation that provides an increase in IME payments for non-state owned hospitals with base year 2002 Medicaid Neonatal Intensive Care Unit (“NICU”) utilization greater than 50 percent, as reported to DMAS, prior to March 1, 2004.

Based on that review, it is this Office’s view that the Director, acting on behalf of the Board pursuant to Va. 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 and has not exceeded that authority.

The authority for this emergency action is found in Va. Code § 2.2-4011, which provides that emergency regulations are “[r]egulations that an agency finds are necessitated by an emergency situation.” The amendments to the regulation will enable the Director, in lieu of the Board of Medical Assistance Services, to comply with the 2004 Acts of Assembly, Chapter 4, Item 326HHH, which states “[t]he Department of Medical Assistance Services shall amend the State Plan for Medical Assistance governing Medicaid reimbursements for hospitals to provide enhanced reimbursements to provide an increase in Indirect Medical Education payments for non-state owned hospitals with base year 2002 Medicaid Neonatal Intensive Care Unit (NICU) utilization greater than 50 percent, as reported to the Department as of March 1, 2004. Out of this appropriation, \$750,000 from the general fund and \$750,000 from nongeneral funds the first year and \$750,000 from the general fund and \$750,000 from nongeneral funds the second year shall be provided for this purpose. Such amendments to the State Plan shall become effective within 280 days or less from the enactment of this act.”

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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 Va. Code § 2.2-4011(A), the Department must state in writing the nature of and necessity for such emergency action, and this appears to have been accomplished in the “Agency Background Document.” In addition, the regulations shall be effective for no more than twelve months from the emergency regulatory action on this subject matter. 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 of the APA. 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. 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 786-1841.

cc: Kim F. Piner, Esquire

Attachment