



COMMONWEALTH of VIRGINIA
Office of the Attorney General

Robert F. McDonnell
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

MEMORANDUM

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

FROM: REATHA B. KAY
Special Counsel to DMAS

DATE: August 1, 2007

SUBJECT: Day Support Waiver Final Regulations

I have reviewed the attached proposed regulations concerning the establishment of the Day Support Waiver. 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 regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

With respect to the changes to the final regulations, it appears that several changes to the final regulation are not changes with “substantial impact,” and, therefore do not necessitate an additional comment period. Those changes are merely technical in nature or clarify the language in the regulation. It also appears that there are several changes that may constitute changes with “substantial impact,” and could necessitate an additional comment period. Pursuant to § 2.2-4013(C), if the Governor finds that one or more changes with substantial impact have been made to the proposed regulation, he *may* (but is not required to) direct DMAS to provide an additional

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thirty days to solicit additional public comment on the changes. In addition, Va. Code § 2.2-4007.6 requires the agency to solicit additional public comment, *if* it receives requests from at least twenty-five persons for an opportunity to submit oral and written comments on the changes to the regulation and if one or more changes with substantial impact were made to the proposed regulation.

Finally, please note that Va. Code § 2.2-4013(B) requires that all changes to the proposed regulations be highlighted in the final regulations, and it appears that this requirement has been fulfilled.

If you have any questions, please feel free to call me at 786-4074.

cc: Kim F. Piner, Esquire

Attachment