



***COMMONWEALTH of VIRGINIA***  
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**MEMORANDUM**

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

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

**DATE: August 20, 2007**

**SUBJECT: Emergency Regulations concerning Tamper Resistant Prescription Pads**

I have reviewed the attached emergency regulations concerning tamper resistant prescriptions.

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 ("APA") and has not exceeded that authority.

The authority for this emergency action is found in Va. Code § 2.2-4011. The amendments to the regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to comply with section 7002(b) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery and Iraq Accountability Appropriations Act of 2007 (Public Law 110-28).

Brian McCormick

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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(B), 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.” 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 786-4074.

cc: Kim F. Piner, Esquire

Attachment