



COMMONWEALTH of VIRGINIA
Office of the Attorney General

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MEMORANDUM

TO: BRIAN MCCORMICK
Regulatory Supervisor
Virginia Department of Medical Assistance Services

FROM: JENNIFER L. GOBBLE
Special Counsel to DMAS

DATE: May 4, 2011

SUBJECT: Exempt Final Action Imposing New Limits for Waiver Programs' Respite Services and Personal Care Services.

I have reviewed the attached exempt final regulations that modify the covered service limits for respite services and personal care services in the specified home and community based care Waiver programs and in the Children's Mental Health demonstration Waiver. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services ("DMAS") has the legal authority to amend the regulations and if the regulations comport with state and federal law.

The changes to 12 VAC 30-120 and 12 VAC 30-135 are necessary to implement mandates set forth in the 2011 Appropriations Act, Item 279 WW and CCCCC. Based on my review, the Director of DMAS, acting on behalf of the Board of Medical Assistance Services, pursuant to Virginia Code §§ 32.1-324 and 325, has the authority to amend these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA") and has not exceeded that authority.

Brian McCormick
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It is my view that amendment of these regulations is exempt from the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(a). If you have any questions, please contact me at 786-4074.

cc: Kim F. Piner, Esquire

Attachment