



COMMONWEALTH of VIRGINIA
Office of the Attorney General

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MEMORANDUM

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

FROM: **ELIZABETH A. MCDONALD** *EAM*
Assistant Attorney General

DATE: **August 28, 2012**

SUBJECT: **Final Exempt Regulation – Review Audit Contractors (12 VAC 30-10-445)**

I have reviewed the above final exempt regulation that will establish programs for DMAS to contract with Recovery Audit Contractors (RACs) to audit payments to Medicaid providers. You have asked the Office of the Attorney General to review and determine if DMAS has the legal authority to promulgate the final exempt regulation and if it comports with state and federal law.

Based on that review, it is this Office's view that DMAS has the authority, subject to compliance with the provisions of Article 2 of the Administrative Process Act (APA), and has not exceeded that authority.

The regulation is required by 42 U.S.C. § 1396(a)(42). It is my view that the promulgation of the regulation is exempt from the procedures of Article 2 of the Administrative Process Act pursuant to Virginia Code § 2.2-4006(A)(4)(c).

If you have any questions, please feel free to contact me at 786-2071.

cc: Kim F. Piner
Senior Assistant Attorney General