



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 M. GUGGENHEIM *EMG*
Assistant Attorney General *ST*

DATE: January 14, 2015

SUBJECT: Emergency Regulations Regarding Dental Services for Pregnant Women
(12 VAC 30-50-190 & 12 VAC 30-141-820)

I have reviewed the emergency regulations that would provide pregnant women who are Medicaid and FAMIS MOMS recipients with dental services. Based on that review, it is this Office's view that the Director of the Department of Medical Assistance Services ("DMAS"), acting on behalf of the Board of Medical Assistance Services pursuant to Virginia 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 Virginia Code § 2.2-4011(A), which provides that regulations that an agency finds are necessitated by an emergency situation may be adopted by an agency upon consultation with the Attorney General, which approval shall be granted only after the agency has submitted a request stating in writing the nature of the emergency, and the necessity for such action shall be at the sole discretion of the Governor. The Department's statement of the nature of the emergency and necessity for such action is set forth in the "Agency Background Document." The Agency Background Document also indicates that the Department submitted a written request to the Governor stating the nature of such emergency.

Pursuant to § 2.2-4012, the attached emergency regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations. In addition, the emergency regulations shall be effective for no more than 18 months. If the Department intends to continue regulating the subject matter governed by these emergency regulations beyond 18 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 regulations must be filed with the Registrar within 180 days after the effective date of the emergency regulations. Va. Code § 2.2-4011(C).

If you have any questions or need any additional information, please feel free to contact me at 786-7363.

cc: Kim F. Piner
Senior Assistant Attorney General