



COMMONWEALTH of VIRGINIA
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MEMORANDUM

TO: VICTORIA P. SIMMONS
Regulatory Coordinator
Department of Medical Assistance Services

FROM: KIM F. PINER
Special Counsel to the Department of Medical Assistance Services

DATE: May 2, 2003

SUBJECT: Emergency Regulations Concerning Prior Authorization for MRI, CAT, and PET Scans

I have reviewed the attached emergency regulations concerning prior authorization for MRI, CAT, and PET Scans. Based on that review, it is my view that the Director, pursuant to Executive Order 21(02) and Virginia Code § 32.1-324(C), and acting on behalf of the Board of Medical Assistance Services, has the statutory authority to promulgate the emergency regulations, and that the regulations comport with the applicable state and/or federal law.

Item 325WW of the 2003 Appropriation Act provides: “The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance to require prior authorization of the following specific high cost non-emergency outpatient procedures: Magnetic Resonance Imaging (MRI), Computer Axial Tomography (CAT) Scans, and Positron Emission Tomography (PET) Scans. The Department shall promulgate emergency regulations to implement this amendment within 280 days or less from the enactment of this act.” Without emergency regulations, the Department would be unable to meet the time frame established by the

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General Assembly. As such, these regulations may be adopted without public comment with the prior approval of the Governor.

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 Virginia Code § 2.2-4011(A), the Department must state in writing the nature of and necessity for such emergency action. In addition, the regulations shall be effective for no more than twelve months. If 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. 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, and 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 786-3524.

c: Siran S. Faulders, Esquire