



COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

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MEMORANDUM

TO: RENEE SLADE WHITE
Regulatory Coordinator
Virginia Department of Medical Assistance Services

FROM: USHA KODURU
Assistant Attorney General

DATE: September 12, 2005

SUBJECT: Final Regulations to Add Community-Based Residential Services as Covered Medicaid Services

I have reviewed the attached final regulations to implement Medicaid coverage of new community-based, residential mental health services. 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 promulgate the final regulations and if the final regulations comport with state and federal law.

It is this Office’s view that DMAS has the authority to promulgate the proposed regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Orders 21 (2002) and 58 (1999) and has not exceeded that authority. The authority for previous emergency and proposed regulation as well as this final regulation is the 2003 Appropriation Act, Item 325 (QQQ), which states that DMAS “shall implement coverage for an additional level of Residential Treatment for Children and Adolescents.”

It appears that several changes to the final regulation are not changes with “substantial impact,” and, therefore do not necessitate an additional comment period. Those changes are merely technical in nature or clarify the language in the regulation. Please note that Virginia Code § 2.2-4013(B) requires that all changes to the proposed regulations be highlighted in the final

Renee Slade White
September 12, 2005
Page 2

regulations, and it appears that this requirement has been fulfilled. Also, pursuant to § 2.2 -4013(C), if the Governor finds that one or more changes with substantial impact have been made to the proposed regulation, he *may* (but is not required to) direct DMAS to provide additional thirty days to solicit additional public comment on the changes. In addition, Virginia Code § 2.2-4007(K) requires the agency to solicit additional public comment, *if* it receives requests from at least twenty-five persons for an opportunity to submit oral and written comments on the changes to the regulations and if one or more changes with substantial impact were made to the proposed regulation.

If you have any questions, please contact me at 786-4905.

Attachment

cc: Kim F. Piner, Esquire