



COMMONWEALTH of VIRGINIA

*Office of the Attorney General
Richmond 23219*

900 East Main Street
Richmond, Virginia 23219
804-786-2071
804-371-8947 TDD

MEMORANDUM

TO: TAMMY DRISCOLL
Supervisor-Dental Services
Department of Medical Assistance Services

FROM: USHA KODURU
Assistant Attorney General

DATE: June 14, 2005

SUBJECT: Emergency Regulation to Modify Prior Authorization for Dental Services

I have reviewed the attached emergency regulation that will modify state regulations and the State Plan for Medical Assistance Services relating to prior authorization for dental services for pediatric Medicaid recipients and for participants in the Family Access to Medical Insurance Security program (FAMIS).

Based on that review, it is this Office's view that the Department of Medical Assistance Services (DMAS or the Department), Item 322 (H) of the 2005 Appropriations Act, has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act (APA) and has not exceeded that authority.

The authority for these emergency actions is found in Va. Code § 2.2-4011, which provides that an "emergency situation" includes a situation "in which Virginia statutory law, or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment..." The amendments to the regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to comply with the 2005 Appropriations Act, Item 322(H). Item 322(H) states that DMAS shall "provide dental services to individuals enrolled in [Medicaid and FAMIS] on a fee-for-service basis, and to revise the

prior authorization requirements for dental services in accordance with industry standards.” The Department shall promulgate emergency regulations to implement provisions of this amendment within 280 days from the enactment date of this act.

This situation qualifies as an emergency as provided in § 2.2-4011(A)(ii) according to the language of the 2005 Appropriations Act, Item 322(H). 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 will qualify for the “emergency” exemption from Article 2 requirements. Please be advised, however, that under Va. Code § 2.2-4011(A), the Department must state in writing the nature of and necessity for such emergency action, and this appears to have been accomplished in the “Agency Background Document.” In addition, the regulations shall be effective for no more than twelve months. As 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 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 (and it appears that this has been done). 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 contact me at 786-1840.

cc: Kim F. Piner, Esquire

Attachment