



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*
Special Counsel to DMAS

DATE: **September 13, 2010**

SUBJECT: **Final Exempt Regulation – Children’s Exemption from Hospice Election (12 VAC 30-50-270 and 30-60-130)**

I have reviewed the above final exempt regulations that will amend the hospice service election provision to exclude children from waiving certain Medicaid treatment when they elect to receive hospice care. You have asked the Office of the Attorney General to review and determine if DMAS has the legal authority to promulgate the final exempt regulations and if they comport 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 amendments to the regulations are required by 42 U.S.C. § 1396d(o)(1). It is my view that the promulgation of the regulations 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 786-7363.

cc: Kim F. Piner
Senior Assistant Attorney General