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MEMORANDUM

TO: BRIAN MCCORMICK
Regulatory Supervisor
Department of Medical Assistance Services

FROM: JENNIFER L. GOBBLE
Assistant Attorney General

DATE: February 12, 2014

SUBJECT: Emergency Regulations – IMD Reimbursement Changes

I have reviewed the attached emergency regulations that would implement reimbursement changes for professional services furnished to patients under 21 years of age in inpatient psychiatric facilities. Based on my 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 Virginia Administrative Process Act ("APA") and has not exceeded that authority.

The authority for this emergency action is found in Virginia Code § 2.2-4011(B), which provides that emergency regulations may be adopted in "situations in which Virginia statutory law, the [Virginia] appropriation act, or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment" The attached emergency regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to comply with the directives set forth in the 2013 *Acts of Assembly*, Chapter 896, Item 307.CCC.

Please be advised that under Virginia Code §2.2-4011(B), the Department must state in writing "the nature of the emergency and of the necessity for such action and may adopt the regulations." Pursuant to § 2.2-4012, such regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations. The Department's statement of the nature of the emergency and necessity for such action appears to have been accomplished in the "Agency Background Document." In addition, the emergency regulations shall be effective for no more than 12 months. If the Department intends to continue regulating the subject matter governed by these emergency regulations 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. 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 786-4905.

cc: Kim F. Piner
Senior Assistant Attorney General