



COMMONWEALTH of VIRGINIA
Office of the Attorney General

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MEMORANDUM

TO: EMILY MCCLELLAN
Regulatory Supervisor
Department of Medical Assistance Services

FROM: JENNIFER L. GOBBLE
Assistant Attorney General

DATE: August 18, 2016

SUBJECT: Emergency Regulations – Three Waivers Redesign

I have reviewed the emergency regulations posted to Townhall as of August 18, 2016, that would implement the redesign of three of DMAS' existing home and community based waivers as approved by the Centers for Medicare and Medicaid Services on August 12, 2016. The Individual and Family Developmental Disabilities Support Waiver is changing to the Family and Individual Supports Waiver; the Intellectual Disability Waiver is changing to the Community Living Waiver; and the Day Support Waiver for Individuals with Mental Retardation is changing to the Building Independence Waiver.

Based on my review, it is this Office's view that the Director of the Department of Medical Assistance Services, 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, and has not exceeded that authority. The attached emergency regulations will enable the Director to implement the waiver redesign consistent with the authority set forth in Virginia Code § 32.1-324 and the directives in Item 301.MMMM.2 of the 2015 *Acts of Assembly*, and Item 306.CCCC of the 2016 *Acts of Assembly*.

The authority for this emergency action is found in Virginia Code § 2.2-4011(B), which provides that agencies may adopt emergency regulations in situations 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, and the

regulation is not exempt under the provisions of subdivision A.4 of Virginia Code § 2.2-4006.

Pursuant to § 2.2-4012, the attached emergency regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations. In addition, the emergency regulations shall be effective for no more than 18 months. If the Department intends to continue regulating the subject matter governed by these emergency regulations beyond 18 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

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