



COMMONWEALTH of VIRGINIA
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MEMORANDUM

TO: **VICTORIA P. SIMMONS**
Regulatory Coordinator
Department of Medical Assistance Services

FROM: **PAIGE S. FITZGERALD**
Special Counsel to DMAS

DATE: **September 29, 2003**

SUBJECT: **Final Regulations concerning Community Mental Health and Substance Abuse Treatment Services**

I have reviewed the attached final regulations concerning community mental health and substance abuse treatment services, sent with your memo of September 15, 2003.

As noted in Kim Piner's previous memorandum dated December 16, 2002, it is this Office's view that the Director, acting on behalf of the Board pursuant to Va. Code § 32.1-324, has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

Based on the explanation contained in the attached regulatory review summary for these final regulations, it can be argued that the changes to the proposed regulations, which are incorporated in the attached final regulations, are not changes with "substantial impact," which could necessitate an additional comment period. The changes are essentially technical in nature, and/or they clarify and correct certain issues raised by comments to the proposed regulations.

Please note that Va. Code § 2.2-4013(B) requires that all changes to the proposed regulations be highlighted in the final 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* require DMAS to provide an additional thirty days to solicit additional public comment on the changes. In addition, Va. 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 regulation and if one or more changes with substantial impact were made to the proposed regulation.

If you have any questions or need any additional information, please feel free to call me.

Attachment

cc: Siran S. Faulders