



COMMONWEALTH of VIRGINIA
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MEMORANDUM

TO: BRIAN MCCORMICK
Department of Medical Assistance Services

FROM: ELIZABETH M. GUGGENHEIM *EMG*
Assistant Attorney General

DATE: December 4, 2014

SUBJECT: Fast Track Regulations regarding the Department of Correction's Authority
for Medicaid Applications, 12 VAC 30-110-1370

I have reviewed the attached proposed regulation, which would provide authority for the Department of Corrections to sign applications for Medicaid for certain incarcerated offenders for the purpose of Medicaid reimbursement for inpatient hospital stays. Based on that review, it is my view that the Director, acting on behalf of the Board pursuant to Va. Code § 32.1-324 and with the authority provided for by Item 384J(2) of the *2014 Acts of Assembly*, has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act. This authority is contingent upon DMAS obtaining approval from the Centers for Medicare and Medicaid Services (CMS) for this action as provided by Item 384J(2) of the *2014 Acts of Assembly*.

Please be aware that this review is based solely upon whether DMAS has the legal authority to promulgate this regulation, not the appropriateness of whether it should be promulgated pursuant to the fast-track process. Pursuant to Virginia Code § 2.2-4012.1, if an objection to the use of the fast-track process is received within the public comment period from 10 or more persons, any member of the applicable standing committee of either House of the General Assembly or of the Joint Commission on Administrative Rules, the Department of Medical Assistance Services shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process set out in this article with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you have any questions or need any additional information, please feel free to call me at 786-2071.

cc: Kim F. Piner
Senior Assistant Attorney General