



COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

Jerry W. Kilgore
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
804-371-8947 TDD

MEMORANDUM

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

FROM: KIM F. PINER
Special Counsel to the Department of Medical Assistance Services

DATE: May 2, 2003

SUBJECT: Emergency Regulations Concerning Freezing the CPI Adjustment for the Medically Needy and Standards of Assistance Income Limits Through FY 2004

I have reviewed the attached emergency regulations concerning freezing the CPI adjustment for the medically needy and standards of assistance income limits through fiscal year 2004. Based on that review, it is my view that the Director, pursuant to Executive Order 21(02) and Virginia Code § 32.1-324(C), and acting on behalf of the Board of Medical Assistance Services, has the statutory authority to promulgate the emergency regulations, and that the regulations comport with the applicable state and/or federal law.

Item 325N of the 2003 Appropriation Act provides: "The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance Services so that the medically needy income limits shall remain at their current level through the fiscal year ending June 30, 2004. This amendment shall become effective within 280 days or less from the enactment of this act." Without emergency regulations, the Department would be unable to meet the time frame established by the General Assembly. As such, these regulations may be adopted without public comment with the prior approval of the Governor.

VICTORIA P. SIMMONS
Department of Medical Assistance Services
May 2, 2003

Accordingly, with the prior approval of the Governor, these regulations qualify for the "emergency" exemption from Article 2 requirements. Please be advised, however, that under Virginia Code § 2.2-4011(A), the Department must state in writing the nature of and necessity for such emergency action. In addition, the regulations shall be effective for no more than twelve months. ." Because this action is intended to be applicable to payments for FY 2004 only, DMAS is not seeking approval of a Notice of Intended Regulatory Action in conformance with Virginia Code § 2.2-4007.

If you have any questions or need any additional information, please feel free to call me at 786-3524.

c: Siran S. Faulders, Esquire