



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*  
*Richmond 23219*

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Attorney General

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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: March 23, 2004**

**SUBJECT: Proposed Regulations concerning School Health Services**

I am in receipt of the attached proposed regulations concerning the coverage of school health services by the Medicaid program. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services has the legal authority to promulgate the attached proposed regulations and to identify any federal or state mandates regarding this regulation.

Based on that review, it is my view that the Director, acting on behalf of the Board pursuant to Va. Code § 32.1-324, has the authority to promulgate these amendments to the State Plan, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority. These regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to make permanent the regulations concerning school health services. The changes were first made by the promulgation of emergency regulations, and were approved by this Office in a memorandum by Kim Piner, dated May 29, 2003.

The authority for both the previously promulgated emergency regulations and these proposed regulations derives from this year's Appropriation Act (Chapter 1042 of the 2003 Acts

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of Assembly, Items 325(XX, and EEE)). Item 325 XX provides: "The Department of Medical Assistance Services shall amend its State Plan for Medical Assistance to cover, as a medical service, school-based transportation for children in special education. The transportation covered is from home to school and the return trip or transportation to a non-school location on days the child has a covered service such as physical therapy. This change is subject to approval by the Centers for Medicare and Medicaid Services. The Department's payment for transportation will be the federal share of the payment only, which is consistent with the Department's coverage of other services for children in special education. School divisions shall document to the Department the non-federal matching funds. The Department shall promulgate emergency regulations to implement this amendment within 280 days or less from the enactment of this act." In addition, Item 325EEE states: "The Department of Medical Assistance Services shall have the authority to amend the State Plan for Medical Assistance to cover additional medical services for special education students and to revise referral and prior authorization requirements for services provided to special education students by school division providers. The Department shall have authority to enact emergency regulations under § 2.2-4011 of the Administrative Process Act, to effect this provision."

If you have any questions or need any additional information, please feel free to call me at 786-0095.

cc: Kim F. Piner, Esquire

Attachment