



COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

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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: July 20, 2004

SUBJECT: Proposed Regulations concerning Utilization Review of High Drug Thresholds for the Family Access to Medical Insurance Security Plan ("FAMIS")

I am in receipt of the proposed regulations establishing utilization review requirements for individuals meeting certain high drug thresholds who are enrolled in the FAMIS 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 implement utilization review requirements regarding high drug thresholds for FAMIS enrollees. The changes were first made by the promulgation of emergency regulations, and were approved by this Office in a memorandum, dated February 11, 2004.

Victoria P. Simmons
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The authority for both the previously promulgated emergency regulations and these proposed regulations is the 2003 Appropriation Act (2003 Acts of Assembly chapter 1042), Item 324(H). Item 324(H) states that DMAS “shall amend the Family Access to Medical Insurance Security Plan and related regulations to require prior authorization of prescription drugs for non-institutionalized recipients when more than nine unique prescriptions have been prescribed within a 180-day period.” These regulations will ensure that DMAS complies with this mandate of the General Assembly.

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

cc: Kim F. Piner, Esquire