COMMONWEALTH of VIRGINIA

Office of the Attorney General
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MEMORANDUM

TO: **RENEE WHITE**
Regulatory Coordinator
Virginia Department of Medical Assistance Services

FROM: **USHA KODURU**
Assistant Attorney General

DATE: April 28, 2005

SUBJECT: **Proposed regulation concerning modifying reimbursement methodology for generic multi-source drugs.**

I am in receipt of the attached proposed regulation to modify reimbursement methodology for generic multi-source drugs for fee–for-service Medicaid recipients. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services ("DMAS" or "the Department") has the legal authority to promulgate the proposed regulation and if the proposed regulation comports with state and federal law.

Based on my review, DMAS has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

The authority for this proposed regulation derives from Virginia Code § 32.1-325 which grants to the Board of Medical Assistance Services the authority to administer and amend the plan for Medical Assistance and authorizes the Director of DMAS to administer and amend the plan for Medical Assistance according to the Board's requirements. Item 326 WW of the 2004 Acts of the Assembly directs DMAS to modify the reimbursement methodology used for generic drug products for Medicaid recipients to be based on a Maximum Allowable Cost list to be established by the

Department. The proposed amendment to 12 VAC 30-80-40 will be more responsive to and more accurately reflect the prices of generic multi-source drugs in the market.

Because these regulations will amend the State Plan, approval by CMS will also be required.

If you have any questions, please contact me at 786-1840.

cc: Kim F. Piner, Esquire

Attachment