



**COMMONWEALTH of VIRGINIA**  
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**MEMORANDUM**

**TO:** **BRIAN MCCORMICK**  
Regulatory Coordinator  
Department of Medical Assistance Services

**FROM:** **REATHA B. KAY**  
Special Counsel to DMAS

**DATE:** December 27, 2004

**SUBJECT:** Proposed Fast-Track Regulations concerning Treatment of Annuities in Medicaid Eligibility Determination

I have reviewed the attached proposed regulations regarding eligibility changes that would change how annuities are evaluated as an asset/resource for Medicaid eligibility purposes.

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. However, 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.

These regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to make the changes to the regulations allowing annuities containing a balloon payment to be counted as an available asset/resource. The authority for these proposed regulations derives from section 1917(d)(4) of the Social Security Act (42 U.S.C. § 1396p(d)(4)), which allows states to establish rules regarding transfer of assets.

Brian McCormick  
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If you have any questions or need any additional information, please feel free to call me at 371-8721.

cc: Kim F. Piner, Esquire

Attachment