



COMMONWEALTH of VIRGINIA
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MEMORANDUM

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

FROM: USHA KODURU
Assistant Attorney General

DATE: February 10, 2005

SUBJECT: Final Regulation to Increase Pharmacy Dispensing Fee for Generics to \$4.00

I have reviewed the attached final regulation to increase the dispensing fee paid by Medicaid for the dispensing of generic drug products by pharmacist providers. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services ("DMAS") has the legal authority to promulgate these final regulations and if the proposed regulations comport with state and federal law.

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 this change to the State plan, without complying with the requirements of Article 2 of the Administrative Process Act and has not exceeded that authority.

The amendment to the regulation increases the dispensing fee for generic prescription drugs from \$3.75 to \$4.00 per prescription per month. This change is in response to the 2004 Appropriation Act, Item 326 (MMM), which states that DMAS "shall amend the State Plan for Medical Assistance to increase the dispensing fee paid to pharmacists from \$3.75 to \$4.00 per prescription per month." Based on the foregoing, it is my view that the promulgation of this amendment is exempt from the procedures of Article 2 of the Administrative Process Act pursuant to Va. Code §2.2-4006(A)(4)(a).

Brian McCormick
February 10, 2004
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If you have any questions, please contact me at 225-2741.

Attachment

cc: Kim F. Piner, Esquire