



COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

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MEMORANDUM

TO: RENE E WHITE
Regulatory Coordinator
Virginia Department of Medical Assistance Services

FROM: USHA KODURU
Assistant Attorney General

DATE: February 22, 2006

SUBJECT: Final Exempt Regulation to Increase the Pharmacy Dispensing Fee

I have reviewed the attached final regulation to increase the dispensing fee paid by Medicaid for dispensing brand name prescription drugs by pharmacy 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 the final regulations and if the final regulations comport with state and federal law.

It is this Office’s view that DMAS has the authority to promulgate the proposed regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Orders 21 (2002) and 58 (1999) and has not exceeded that authority. The authority for this final regulation is derived from the 2005 General Assembly in the Appropriations Act, Item 326 (MMM.2), which states that DMAS shall use \$83,333 from the Virginia Health Care Fund and \$83,333 from federal funds to “increase the dispensing fee paid to pharmacists for brand name drugs from \$3.75 to \$4.00 per prescription per month.” This amendment to the State Plan shall become effective within 280 days or less from the enactment of this act. Based on the foregoing, it is my view that the promulgation of this amendment is

Renee White
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exempt from the procedures of Article 2 of the Administrative Process Act pursuant to Virginia Code §2.2-4006(A)(4)(a).

If you have any questions, please contact me at 786-4905.

Attachment