



COMMONWEALTH of VIRGINIA
Office of the Attorney General

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MEMORANDUM

TO: BRIAN MCCORMICK
Regulatory and Manual Section Manager
Department of Medical Assistance Services

FROM: REATHA B. KAY
Special Counsel to DMAS

DATE: September 14, 2006

SUBJECT: Emergency Regulations concerning Reimbursement for School Divisions

I have reviewed the attached emergency regulations concerning changes to the reimbursement methodology for school divisions.

Based on that review, it is this Office's view that the Director, acting on behalf of the Board pursuant to Va. Code § 32.1-324, has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

The authority for this emergency action is found in Va. Code § 2.2-4011, which provides that emergency regulations are "[r]egulations that an agency finds are necessitated by an emergency situation." The amendments to the regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to comply with Item 302.NN of the 2006 Appropriation Act which states, in part, "[t]he Department of Medical Assistance Services has the authority to implement cost-based reimbursement for special education health services furnished by school division providers effective July 1, 2006. School division providers shall file annual cost reports for these services and the department shall settle reimbursement to actual costs. . . . The

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Department shall have the authority to enact emergency regulations under § 2.2-4011 of the Administrative Process Act to effect this provision.”

Accordingly, with the prior approval of the Governor, these regulations qualify for the “emergency” exemption from Article 2 requirements. Please be advised, however, that under Va. Code § 2.2-4011(A), the Department must state in writing the nature of and necessity for such emergency action, and this appears to have been accomplished in the “Agency Background Document.” In addition, the regulations shall be effective for no more than twelve months from the emergency regulatory action on this subject matter. As the Department intends to continue regulating the subject matter governed by this emergency regulation beyond 12 months, it will be necessary to replace these emergency regulations with regulations duly promulgated under Article 2 of the APA. A Notice of Intended Regulatory Action relating to the proposed replacement regulations must be filed with the Registrar within 60 days of the effective date of the emergency regulations. The proposed replacement regulations must be filed with the Registrar within 180 days after the effective date of the emergency regulations.

If you have any questions, please contact me at 786-1841.

cc: Kim F. Piner, Esquire

Attachment