Robert F. McDonnell
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991

MEMORANDUM

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

FROM: **USHA KODURU**
Assistant Attorney General

DATE: **September 15, 2008**

SUBJECT: **Final Exempt Regulation to Implement Section 6034 of the Deficit Reduction Act**

I have reviewed the attached final exempt regulation to have DMAS comply with Medicaid integrity program efforts. 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 regulation and if the final regulation comport with state and federal law.

It is this Office's view that the Director, acting on behalf of the Board of Medical Assistance Services, pursuant to Va. Code § 32.1-324, has the authority to promulgate the proposed regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA") and has not exceeded that authority. The Deficit Reduction Act, section 6034, is based upon section 1902(a)(69) of the Social Security Act, which requires that the "State must comply with any requirements determined by the Secretary to be necessary for carrying out the Medicaid Integrity Program established under section 1936[.]" The Centers for Medicare and Medicaid Services ("CMS") provided DMAS with the specific language to include in the Medicaid State Plan and subsequently in this regulation. DMAS does not have any discretion in this language mandated by CMS. Based on the foregoing, it is my view that the promulgation of this regulation is exempt from the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(c).

If you have any questions, please contact me at 786-4074.

Attachment

cc: Kim F. Piner, Esquire
        Senior Assistant Attorney General