



COMMONWEALTH of VIRGINIA
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TO: BRIAN MCCORMICK
Regulatory Supervisor
Virginia Department of Medical Assistance Services

FROM: USHA KODURU
Assistant Attorney General

DATE: October 30, 2009

**SUBJECT: Exempt Final Regulations to Amend the FAMIS and FAMIS MOMS
Eligibility Requirements**

I have reviewed the attached exempt final regulations that impose documentation requirements in determining eligibility for the FAMIS and FAMIS MOMS programs. 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 regulations and if the regulations comport with state and federal law.

Based on that review, it is my view that the Director of DMAS, pursuant to Virginia Code § 32.1-351(K) has the authority to amend these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

These amendments incorporate a directive in Section 211 of the Children's Health Insurance Program Reauthorization Act of 2009 (Public Law 111-3) that applies the Medicaid citizenship verification requirement to the Children's Health Insurance Program. FAMIS and FAMIS MOMS applicants will be required to provide documentary evidence of citizenship or nationality and documentation of personal identity in order to meet the citizenship eligibility requirement unless otherwise exempt. Based on the foregoing, it is my view that the amendment of these regulations are exempt from the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(c).

Brian McCormick

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

cc: Kim F. Piner, Esquire

Attachment