



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: ELIZABETH A. MCDONALD *EAM*
Special Counsel to DMAS

DATE: May 5, 2011

**SUBJECT: Final Exempt Regulation – Medicaid Prohibition on Payments to
Institutions or Entities Located Outside of the United States
(12 VAC 30-10-435)**

I have reviewed the attached final exempt regulation that would prohibit DMAS from providing payments to any financial institution or entity located outside of the United States for any items or services provided under the State Plan or waiver. You have asked the Office of the Attorney General to review the proposed regulation to determine if DMAS has the legal authority to promulgate the regulation as final exempt and if it comports with state and federal law.

Based on that review, it is this Office's view that DMAS has the authority, subject to compliance with the provisions of Article 2 of the Administrative Process Act (APA), and has not exceeded that authority.

This regulation is required by section 6505 of the Patient Protection and Affordable Care Act (111 P.L. 148). It is my view that the promulgation of this regulation is exempt from the procedures of Article 2 of the Administrative Process Act pursuant to Virginia Code § 2.2-4006(A)(4)(c).

If you have any questions, please feel free to contact me at 786-7363.

cc: Kim F. Piner
Senior Assistant Attorney General