



**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: July 6, 2011**

**SUBJECT: Emergency Regulations Regarding Intensive In-Home and  
Community Mental Health Services (12 VAC 30-50-130, 12 VAC 30-  
50-226, 12 VAC 30-60-61, 12 VAC 30-60-143, 12 VAC 30-130-2000)**

I have reviewed the attached emergency regulations that would change In-Home and Community Mental Health services in order to ensure appropriate utilization and cost efficiency, implement provider qualifications, and require an independent assessment for children's community mental health rehabilitative services.

It is this Office's view that the Director of the Department of Medical Assistance Services ("DMAS"), acting on behalf of the Board of Medical Assistance Services pursuant to Virginia 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 ("APA") and has not exceeded that authority.

The authority for this emergency action is found in Virginia Code § 2.2-4011, which provides that an "emergency situation" is a "situation in which Virginia statutory law, the Virginia appropriations act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment..." The amendments to the regulations

will enable the Director, in lieu of the Board of Medical Assistance Services, to comply with Chapter 890, Item 297 YY of the 2011 *Acts of Assembly*.

Accordingly, with the prior approval of the Governor, these regulations will qualify for the "emergency" exemption from Article 2 requirements. Please be advised, however, that under Virginia Code §2.2-4011(A), the Department must state in writing the nature of and necessity for such emergency actions, and this appears to have been accomplished in the "Agency Background Document." In addition, the regulations shall be effective for no more than 12 months. 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 Register within 60 days of the effective date of the emergency regulations. The proposed regulations must be filed with the Register within 180 days after the effective date of the emergency regulations.

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

cc: Kim F. Piner  
Senior Assistant Attorney General