



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Mark R. Herring
Attorney General

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

MEMORANDUM

TO: EMILY MCCLELLAN
Regulatory Supervisor
Department of Medical Assistance Services

FROM: ELIZABETH M. GUGGENHEIM *E.M.G.*
Assistant Attorney General

DATE: November 4, 2016

SUBJECT: Emergency Regulation – LDCT Lung Cancer Screening

I have reviewed the attached emergency regulation that would provide coverage of annual LDCT lung cancer screening as a preventive measure, in the absence of symptoms, for at-risk beneficiaries. Based on that review, 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 the regulation, subject to compliance with the provisions of Article 2 of the Virginia Administrative Process Act ("APA") and has not exceeded that authority.

The authority for this emergency action is found in Virginia Code § 2.2-4011(B), which provides that emergency regulations may be adopted in "situations in which Virginia statutory law, the [Virginia] appropriation act, or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment..." The amendments to the regulation will enable the Director, in lieu of the Board of Medical Assistance Services, to comply with the 2016 *Acts of Assembly* Chapter 780, Item 306.0000.

Please be advised that under Virginia Code §2.2-4011(B), the Department must state in writing "the nature of the emergency and of the necessity for such action and may adopt the regulations. Pursuant to § 2.2-4012, such regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations." The Department's statement of the

nature of the emergency and necessity for such action appears to have been accomplished in the “Agency Background Document.” In addition, the emergency regulation shall be effective for no more than 12 months. If the Department intends to continue regulating the subject matter governed by this emergency regulation beyond 12 months, it will be necessary to replace this emergency regulation with a regulation duly promulgated under Article 2 of the APA. A Notice of Intended Regulatory Action relating to the proposed replacement regulation must be filed with the Register within 60 days of the effective date of the emergency regulation. The proposed regulation must be filed with the Register within 180 days after the effective date of the emergency regulation. Va. Code § 2.2-4011(C).

If you have any questions or need any additional information, please feel free to contact me at 786-2071.

cc: Kim F. Piner
Senior Assistant Attorney General