



COMMONWEALTH of VIRGINIA
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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: **March 9, 2009**

SUBJECT: **Final Regulation concerning MCO Coverage for FAMIS Newborns**

I have reviewed the attached final regulation, which provides that infants born to Family Access to Medical Insurance Security (FAMIS) recipients receive health care coverage immediately following birth. 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 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. The authority for the previous emergency regulation and this final regulation is Chapter 879, Item 305(E) of the 2008 Acts of Assembly.

It appears that changes to the final regulation are not changes with "substantial impact," and therefore do not necessitate an additional comment period. Those changes are merely technical in nature or clarify the language in the regulation. Please note that

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Virginia Code § 2.2-4013(B) requires that all changes to the proposed regulation be highlighted in the final regulation, and it appears that this requirement has been fulfilled. Also, pursuant to § 2.2-4013(C), if the Governor finds that one or more changes with substantial impact have been made to the proposed regulation, he may (but is not required to) direct DMAS to provide additional thirty (30) days to solicit additional public comment on the changes. In addition, Virginia Code § 2.2-4007.06 requires the agency to solicit additional public comment if it receives requests from at least twenty-five (25) persons for an opportunity to submit oral and written comments on the changes to the regulation and if one or more changes with substantial impact were made to the proposed regulation.

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

cc: Kim F. Piner
Senior Assistant Attorney General