



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*

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**MEMORANDUM**

**TO:** **BRIAN MCCORMICK**  
Regulatory Supervisor  
Department of Medical Assistance Services

**FROM:** **USHA KODURU**  
Assistant Attorney General

**DATE:** **December 6, 2010**

**SUBJECT:** **Proposed Regulations for Elderly or Disabled with Consumer Direction Waiver 2009 Updates**

I have reviewed the attached proposed regulations to update the existing Elderly or Disabled Consumer Direction Waiver program. 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 amend these regulations and if the proposed amendments comport with state and federal law.

Based on my review, DMAS has the authority to promulgate these amendments, subject to compliance with Article 2 of the Administrative Process Act and has not exceeded that authority.

Virginia Code § 32.1-325 grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance, and §§ 32.1-324 and 325 grant the authority to the Director to administer the Plan according to the Board’s requirements. Additionally, Section 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payment for Medicaid services.

Brian McCormick  
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If you have any questions or need any additional information, please call me at 786-4074.

cc: Kim F. Piner  
Senior Assistant Attorney General