



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*  
*Richmond 23219*

**Jerry W. Kilgore**  
Attorney General

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**MEMORANDUM**

**TO: VICTORIA P. SIMMONS**  
Regulatory Coordinator  
Department of Medical Assistance Services

**FROM: PAIGE S. FITZGERALD**  
Special Counsel to DMAS

**DATE: July 21, 2003**

**SUBJECT: Proposed Regulations concerning Reasonable Limits on Amounts for  
Necessary Medical or Remedial Care Not Covered Under Medicaid**

I am in receipt of the attached proposed regulations concerning reasonable limits on amounts for necessary medical or remedial care not covered under Medicaid. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services has the legal authority to promulgate the attached proposed regulations and to identify any federal or state mandates regarding this regulation.

Based on that review, it is my view that the Director, acting on behalf of the Board pursuant to Va. Code § 32.1-324, has the authority to promulgate these amendments to the State Plan, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority. These regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to make permanent the regulations concerning the adjustments to nursing facility residents' patient pay amounts. These changes were originally made by the promulgation of emergency regulations, and were approved by this Office in a memorandum dated May 2, 2003.

The authority for both the previously promulgated emergency regulations and these

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proposed regulations derives from this year's Appropriation Act (Chapter 1042 of the 2003 Acts of Assembly, Item 325(BBB)). Item 325(BBB) states that: "The Department of Medical Assistance Services shall amend its State Plan for Medical Assistance to set maximum amounts for non-covered medical services that can be allowed for nursing facility residents as adjustments to the patient pay responsibility. These maximum amounts shall not be lower than the highest amounts reimbursed by Medicare or Medicaid for the same non-covered medical service."

If you have any questions or need any additional information, please feel free to call me at 786-3450.

cc: Siran S. Faulders, Esquire

Attachment