



COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

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Attorney General

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TO: BRIAN MCCORMICK
Regulatory Supervisor
Department of Medical Assistance Services

FROM: USHA KODURU
Assistant Attorney General

DATE: April 29, 2009

SUBJECT: Exempt Final Regulation to Remove the 21 Hour Personal Care Requirement for EDCD Waiver Enrollees Receiving Hospice Services

I have reviewed the attached exempt final regulation to remove the 21 hour personal care requirement for individuals in the EDCD waiver who also receive hospice services. 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 regulations and if the regulations comport with state and federal law.

Based on that review, it is my view that the Director of DMAS, acting on behalf of the Board of Medical Assistance Services pursuant to Va. Code §§ 32.1-324 and 325, has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority. This regulation incorporates a General Assembly mandate as set forth in Item 306 RRR of the 2009 Appropriations Act. Based on the foregoing, it is my view that the promulgation of this regulation is exempt from the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(a).

If you have any questions, please contact me at 786-4074.

cc: Kim F. Piner, Esquire
Senior Assistant Attorney General

Attachments