



Virginia
Regulatory
Town Hall

Emergency Regulation
Agency Background Document

Agency Name:	Dept. of Medical Assistance Services 12 VAC 30
VAC Chapter Number:	Chapters 10, 20
Regulation Title:	Provider Appeals
Action Title:	Provider Appeals
Date:	May 10, 2000

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

Emergency Preamble

Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).

Please include a brief summary of the emergency action. There is no need to state each provision or amendment.

The Code §9-6.14:4.1(C)(5) provides for regulations which an agency finds are necessitated by an emergency situation. To enable the Director, in lieu of the Board of Medical Assistance Services, to comply with Chapter 967, which amends Va. Code §32.1-325.1, he is to promulgate regulations to implement the provisions of the statute. This issue qualifies as an emergency regulation as provided for in §9-6.14:4.1(C)(5)(ii), because Virginia statutory law requires this regulation to be effective within 280 days from the enactment of the law. This law was enacted by the Governor on April 9, 2000. As such, this regulation may be adopted without public comment with the prior approval of the Governor and may become effective July 1, 2000.

Since this emergency regulation will be effective for no more than 12 months and the Director wishes to continue regulating the subject entities, the Department is also initiating the Administrative Process Act Article 2 procedures.

Basis

Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.

Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.

The Code of Virginia (1950) as amended, §32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, §32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) §9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval.

Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA. Therefore, approval to file the required Notice of Intended Regulatory Action is also necessary and hereby being requested by this action.

Without an emergency regulation, this amendment to the State Plan cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the July 1, 2000, effective date specified by the statute. The statute requires the Department to promulgate emergency regulations to implement its provisions.

Substance

Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

The sections of the State Plan affected by this action are section 7.5 General Provider Appeals (12 VAC 30-10-1000) and Attachment 7.5 Provider Appeals (12 VAC 30-20-500). The existing regulation sections being repealed by this action are: Methods and Standards for Establishing Payment Rates-Inpatient Hospital Care, Attachment 4.19-A, Supplement 3, item VIII Refund of Overpayments (12 VAC 30-70-140 to 12 VAC 30-70-145); Methods and Standards for Establishing Payment Rates-Long Term Care, Attachment 4.19-D, Nursing Home Payment System Part XV, Refund of Overpayments (12 VAC 30-90-130 to 12 VAC 30-90-133 and 12 VAC 30-90-135).

Presently, the State Plan for Medical Assistance contains language addressing provider appeals of overpayments via the inpatient hospital reimbursement and the nursing facility reimbursement methodologies. These existing regulations have been superseded in intent and outcome by the passage of HB 892 and therefore, are being repealed.

The 2000 General Assembly passed and the Governor enacted, on April 9, 2000, HB 892, which requires the processing of provider appeals within six months at the informal level and within six months at the formal level. If the Department does not meet its statutory time frames, then the decision is deemed to be in favor of the appealing provider, as provided in the new statute. The statute applies to all administrative appeals filed on or after July 1, 2000. In order to conduct these appeals to conclusion within the statutorily set time limits, DMAS must include the various time periods specified the State Plan for Medical Assistance.

In developing these emergency regulations, DMAS conferred with five provider organizations: the Virginia Health Care Association (VHCA), the Virginia Association of Non-Profit Homes for the Aging (VANHA), the Virginia Association for Home Care (VAHC), the Virginia Hospital and Healthcare Association (VHHA), and the Medical Society of Virginia. The VHCA commented and also transmitted comments from VANHA and VAHC. The VHCA also provided the draft regulations to two provider attorneys and two provider accountants. DMAS also met with the VHCA to discuss its comments.

Alternatives

Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.

Action taken by the 2000 General Assembly determined the DMAS policy and permitted no alternatives.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This action will not have a direct affect on families in the Commonwealth.