



Virginia  
Regulatory  
Town Hall

## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency Name:</b>	Dept. of Medical Assistance Services (DMAS); 12 VAC 30
<b>VAC Chapter Number:</b>	12 VAC 30, Chapter 120
<b>Regulation Title:</b>	Medallion II
<b>Action Title:</b>	Changes from the BBA
<b>Date:</b>	

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.*

This action qualifies as an emergency regulation, pursuant to the authority of the *Code of Virginia*, 1950 as amended, § 2.2-4011, because it is responding to a mandate in the 2003 Virginia Appropriations Act (Item 325 R1 and R2) and is not otherwise exempt under the provisions of the *Code* § 2.2-4006. A final exempt regulation, incorporating changes mandated by the Balanced Budget Act of 1997 (BBA) and its companion regulations, preceded the present emergency package and became effective August 13, 2003

The revisions set forth in this regulatory package reflect certain programmatic changes made to the Medallion II Waiver, clarify certain existing provisions, and incorporate certain optional changes set forth in the BBA and corresponding regulations. Revisions include changes to the exemptions to enrollment to Medallion II (12 VAC 30-120-370) and modifications to the grievance and appeal process (12 VAC 30-120-420). 12 VAC 30-120-380 was also revised to be consistent with 42 CFR 438.108. Since DMAS intends to continue regulating the issue contained in this emergency regulation past the effective period permitted by this emergency action, it is also requesting approval of its Notice of Intended Regulatory Action in conformance to § 2.2-4007.

### 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.*

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The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements.

The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

### 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.*

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The regulations affected by this action are the following sections of the Medallion II regulations: Medallion II Enrollees (12 VAC 30-120-370); Medallion II MCO Responsibilities (12 VAC 30-120-380), and Client Grievances and Appeals (12 VAC 30-120-420).

Medallion II Enrollees (12 VAC 30-120-370)

DMAS is adding a section [12 VAC 30-120-370(B)(14)] that authorizes the Agency to disenroll any client that engages in a pattern of non-compliance with Medallion II rules, guidelines and procedures. Prior to documentation DMAS have sufficient evidence of non-compliance, as well as evidence of any efforts made to resolve the conflict. The decision to disenroll a client may be appealed.

The section governing disenrollment for good cause (12 VAC 30-120-370H.2) was amended to clarify that a written response be provided to a good cause request in the timeframe set by DMAS and in compliance with 42 CFR 438.56.

MCO responsibilities [12 VAC 30-120-380(I)]

This section was revised to conform this provision with 42 CFR 438.108, regarding cost sharing obligations that can be imposed by Medallion II MCOs.

Client Grievances (12 VAC 30-120-420)

The changes to this section specify that the enrollee must follow-up an oral request for an appeal with a written request within 10 business days (unless the request is for an expedited appeal). Although 438.402 b(3)(ii) requires that an oral request for appeal be followed up with a written request, it has provided the State with discretion in establishing the timeframe. The changes to this section also clarify who may follow-up on the enrollee's behalf.

The requirement that MCO's provide DMAS with documentation of any written requests was deleted since each MCO submits a monthly appeal/grievance report that meets the Department's monitoring needs. The timeframe by which DMAS must issue standard appeal decisions was changed from 14 to 30 days.

## 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.*

The changes to the regulations described herein are as a result of requirements set forth in the Balanced Budget Act of 1997. While most BBA related changes were reflected in the previous exempt regulation package, there were several regulations that required the state to select and establish procedural timeframes from a range set out in 42 CFR section 438 *et. seq.* For efficiency of operation and the protection of recipients' notice and due process rights, the procedural timeframes selected for Medallion II were based upon current practice in the program. Where neither a current practice nor policy was in place, timeframes were established in accordance with Centers for Medicare and Medicaid Services (CMS) criteria that the timeframe be "reasonable."

**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.

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These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or 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. It does not strengthen or erode the marital commitment, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.