



Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Human Resource Management
Virginia Administrative Code (VAC) citation	1 VAC-55-20
Regulation title	Commonwealth of Virginia Health Benefits Program
Action title	Increase the limiting age for dependent children to age 26.
Date this document prepared	June 8, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

These amendments will increase the limiting age of adult dependent children from age 23 to age 26. Additionally, they remove any residency and support requirement that currently applies to otherwise eligible adult children. Furthermore, the plans will no longer cover grandchildren under any circumstance, unless the employee has sole legal custody of the child.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On June 8, 2010, the Department of Human Resource Management proposed to amend sections 1 VAC55-20-20, and 1 VAC55-20-320 of the Virginia Administrative Code relating to the

Commonwealth of Virginia Health Benefits Program in order to conform these regulations to the health care reform law known as the Patient Protection and Affordable Care Act.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

The Department of Human Resource Management is authorized by § 2.2-2818 and §2.2-1204 of the Code of Virginia to promulgate regulations. These amended regulations are the result of the Patient Protection and Affordable Care Act and conform to the following federal regulations.

Internal Revenue Service 26 CFR Parts 54 and 602

Employee Benefits Security Administration 29 CFR Part 2590

Department of Health and Human Services 45 CFR Parts 144, 146, and 14

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

These regulations are necessary in order for the health benefit plans administered by the Department of Human Resource Management to be in compliance with the Patient Protection and Affordable Care Act.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

These regulations are necessary in order for the health benefit plans administered by the Department of Human Resource Management to be in compliance with the Patient Protection and Affordable Care Act. These regulations include an additional change which is not required by the Act, but serves the plans by avoiding adverse selection toward the plan, requiring that in order for an employee to cover a grandchild, the employee must have sole permanent legal

custody of that grandchild. This was necessary because the Patient Protection and Affordable Care Act forbids eligibility of dependent children to be based on residency.

Since this change was not required by the Patient Protection and Affordable Care Act it was felt that this amendment did not meet the requirements set forth for Emergency regulations.

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

These amendments will increase the limiting age of adult dependent children from age 23 to age 26. Additionally, they remove any residency and support requirement that currently applies to otherwise eligible adult children. Furthermore, the plans will no longer cover grandchildren under any circumstance, unless the employee has sole permanent legal custody of the child.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

The Department does not have any choice but to amend the current regulations, as they are in conflict with the Patient Protection and Affordable Care Act. The act does not allow health benefit plans to use residency or financial support in determining eligibility for dependent children.

An advantage is that these changes will allow greater access to health benefits to the children of covered employees.

The disadvantage is that the greater access granted to the children will result in additional cost to the plan in claim expenses.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

Not Applicable.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Not Applicable.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Not Applicable. These plans must comply with federal law.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and	The economic impact is unknown, however,
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<p>enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>fiscal impact calculated in 2009 on extending dependent age to 25 indicated a potential annual increase of \$4 million. This assumed existing residency and support requirements, so the cost of this change, which eliminates those requirements, is likely to exceed that amount.</p>
<p>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</p>	<p>For those localities participating in The Local Choice program the economic impact is unknown. Depending on the amount of enrollment and membership increases, the cost likely will increase.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</p>	<p>Not Applicable.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Not Applicable.</p>
<p>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>Not Applicable.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There are no alternatives. The plans covered by these regulations must comply with federal law.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory 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.

There should be a negligible impact on the family due to these regulations. The family will benefit by the additional financial security due to the health benefit plans providing coverage to dependent children up to the end of the year in which the child turns age 26.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
		<p>Current regulations contain financial support and residency requirements in order for an employee to cover their children. Furthermore the plans only provide coverage to the end of the year in which the child turns age 23</p>	<p>The proposed changes remove financial support and residency requirements. Additionally the change increases the limiting age for dependent coverage from age 23 to age 26.</p>
		<p>The plan currently covers children of dependent children, so long as both the dependent child(ren) and their child(ren) are minors and live with the employee.</p>	<p>Grandchildren will now only be eligible for coverage if the employee has sole permanent legal custody of the grandchild.</p>
		<p>The plan currently covers children for which the employee has sole permanent legal custody</p>	<p>The plan will continue to provide coverage for which the employee has sole permanent legal custody.</p>

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements