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Fast Track Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12 VAC 30-10, 30-20 and 30-40
Regulation title	State Plan under Title XIX, Administration of Medical Assistance, and Eligibility Conditions and Requirements
Action title	Long-Term Care Partnership Insurance
Document preparation date	

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The Deficit Reduction Act of 2005 (DRA) allows states to implement “Long-term Care Partnerships” in order to make the purchase of long-term care (LTC) insurance more attractive to consumers. House Bill 759 from the 2006 General Assembly [now Code of Virginia § 32.1-325 (A)(24)], requires DMAS to implement a LTC Partnership insurance program in accordance with federal guidelines. By coordinating public and private efforts, LTC Partnerships attempt to delay or eliminate the need for individuals to access Medicaid for LTC services. Long-term care insurance policies protect assets in the amount equal to the amount that a LTC Partnership insurance policy **pays out in benefits**. These assets are protected during the Medicaid eligibility determination and during estate recovery actions. This action encourages individuals to take steps to ensure their long term care needs are met without relying upon the State for the cost of their care.

Statement of agency final 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.

I hereby approve the foregoing Agency Background Document with the attached amended State Plan pages: State Plan Under Title XIX of the Social Security Act (12 VAC 30-10-560, Liens and recoveries), Administration of Medical Assistance Services (12 VAC 30-20-140, Estate recoveries), and Eligibility conditions and requirements (12 VAC 30-40-290, More liberal methods of treating resources under §1902(r)(2) of the Act: §1902(f) states), and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-40 12.1, of the Administrative Process Act and is full, true, and correctly dated.

Date

Patrick W. Finnerty, Director
Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly bill and chapter numbers, 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 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. This action was also mandated by the 2006 General Assembly in House Bill 759, now Va. Code § 32.1-324(A)(24).

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

Pursuant to Va. Code § 32.1-324(A)(24), “The purpose of the program shall be to reduce Medicaid costs for long-term care by delaying or eliminating dependence on Medicaid for such services through encouraging the purchase of private long-term care insurance policies that have been designated as qualified state long-term care insurance partnerships and may be used as the first source of benefits for the participant's long-term care.” LTC Partnership programs are public-private ventures to address the financing responsibility of LTC. Partnerships are designed to encourage individuals with moderate incomes to purchase private LTC insurance in order to fund their LTC needs, rather than relying on Medicaid to do so. LTC Partnerships combine private LTC insurance with special access to Medicaid for individuals who utilize their LTC insurance benefits. The idea, essentially, is to encourage citizens to purchase a limited, and therefore more affordable amount of LTC insurance coverage, with the assurance that they could receive additional LTC services through Medicaid without having to reduce their assets to the \$2,000 Medicaid asset limit (which is required in order to meet Medicaid eligibility) after their insurance coverage is exhausted.

This action helps protect health and welfare of the Commonwealth by encouraging citizens to anticipate their long-term medical care needs and to ensure that these needs will be met at minimal expense to taxpayers.

Rationale for using fast track process

Please explain why the fast track process is being used to promulgate this regulation.

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from (1) 10 or more persons, (2) any member of the applicable standing committee of either house of the General Assembly or (3) any member 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.

This change, directed by the 2006 General Assembly, is not controversial. The Agency is using the Fast-Track process to complete the needed regulatory changes to give the citizens of the Commonwealth the ability to purchase long-term care partnership insurance, which ultimately saves the Medicaid program money and encourages consumer choice and control over their long-term care options. The Fast-Track process permits the Agency to implement this new program as quickly as possible in conformity with the General Assembly mandate.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)

When an individual applies for Medicaid coverage, the Agency reviews their financial assets or resources. If the individual holds resources above a certain limit, that individual will not qualify for Medicaid coverage. Under this new long-term care partnership program, for individuals who

have purchased and used a long-term care partnership insurance policy, DMAS will disregard the applicant’s resources, dollar for dollar, up to the amount of benefits paid by the long-term care insurer on the applicant’s behalf. This change is found in a new subsection (G), found in 12 VAC 30-40-290 [More liberal methods of treating resources under §1902(r)(2) of the Act: §1902(f)].

In addition, when a Medicaid enrollee dies, the Agency reviews their estate resources and may attempt to recover amounts paid by the Agency for the individual’s Medicaid covered medical services. Under this new long-term care partnership insurance option, however, the State will not seek adjustment or recovery from the individual’s estate for the amount of assets or resources disregarded at any time during an individual’s initial eligibility determination or subsequent eligibility redeterminations. This change is found in a new subsection [(A)(4)], found in 12 VAC 30-10-560 (Liens and recoveries), as well as in 12 VAC 30-20-140 (Estate recoveries).

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

This regulatory action poses no disadvantages to the agency, public or the Commonwealth. The advantages are that private citizens are encouraged to take responsibility for their own long-term care, with Medicaid forming solely a safety net. This more efficient approach to long-term care saves the taxpayers money and helps to insure access to care for the most vulnerable citizens.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>Projected LTC Savings: These regulatory changes do not have an appreciable fiscal impact in the short term. They could potentially result in some savings in the long-term; however it will be many years until any appreciable cost savings would be realized.</p> <p>Projected Cost to State Agencies: To establish a LTC partnership program, the</p>
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	<p>Bureau of Insurance, Virginia Department of Social Services, and DMAS must develop reporting and tracking procedures that will enable appropriate individuals to apply the policy holder’s accrued LTC insurance benefits to his or her application for Medicaid. The estimated cost for this is \$17,500 (2.3 staff people at each of the three agencies who spend 80 hours each of their time at \$31.50 per hour). In addition, DMAS and the Dept. of Social Services will incur programming costs of roughly \$187,500 (1500 hours of at \$120 hour) to develop, test, and implement changes to its eligibility file.</p>
<p>Projected cost of the regulation on localities</p>	<p>This regulation should not have a fiscal impact on localities.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>These regulations will impact insurance agencies and agents who are licensed to sell long-term care insurance in the Commonwealth and who meet the Bureau of Insurance’s requirements for selling long-term care partnership policies. They will also impact Virginians who choose to purchase a long-term care partnership insurance policy.</p>
<p>Agency’s best estimate of the number of such entities that will be affected</p>	<p>Insurance Industry Impact: Thirty-six companies have long-term care insurance policies available for sale in Virginia. These companies may choose to develop LTC partnership policies.</p> <p>In addition, there are 26,193 resident agents and 42,537 non-resident agents who are licensed to sell LTC insurance policies. Any of these agents could choose to participate in the training required to sell LTC partnership policies.</p> <p>Citizen Impact: Close to 3% of Virginians (219,000) currently hold LTC insurance policies. If LTC partnership policies increase the number of policyholders by 1% of all Virginians, 75,000</p>

	<p>more Virginians will be prepared for their future LTC needs.</p>
<p>Projected cost of the regulation for affected individuals, businesses, or other entities</p>	<p>Insurance Industry Cost: Insurance companies that offer LTC partnership policies will need to develop and provide appropriate training for agents and reporting procedures for policy holders. These costs, however, should be recouped through future sales of LTC partnership policies.</p> <p>Citizen Cost: The cost of long-term care insurance varies widely, depending on the individual’s age, location, and the options selected. The average annual cost for a standard policy with inflation protection can run between \$1,500 for an individual who is 50 years old to \$2,500 for an individual who is 65 years old. Purchase of a LTC partnership is voluntary and should protect the purchaser from the increasing costs of future long-term care services.</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.

There was no genuine alternative open to the Agency. Although the LTC Partnership program was optional under the Deficit Reduction Act of 2005 (DRA), House Bill 759 of the 2006 General Assembly required DMAS to implement a LTC Partnership program in accordance with federal constraints. The DRA was very specific concerning the implementation of the program, and the federal Medicaid authority provided a detailed implementation methodology, which left the Agency with no real options regarding how the program would be structured or implemented.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

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 and is not expected to affect disposable family income.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes.

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

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-10-560		Liens and recoveries	Added new section (A)(4) to implement disregard of resources associated with long-term care partnership insurance policies.
12VAC30-20-140		Estate recoveries	Added new section (E) to implement disregard of resources associated with long-term care partnership insurance policies.
12VAC30-40-290		More liberal methods of treating resources	Inserted into section (G) details to implement long-term care partnership insurance policies resources disregards.