



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-40
Regulation title	Eligibility Conditions and Requirements
Action title	Resources and Transfers
Date this document prepared	April 21, 2008

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*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this regulatory action is to clarify and augment the existing regulations regarding restrictions on transfers of assets and the treatment of certain resources that may be counted in the process of Medicaid eligibility determination. This action is necessary to ensure that Medicaid funds are reserved for eligible individuals who meet established criteria for payment of their incurred medical expenses.

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 Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe 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.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The Department of Medical Assistance Services (DMAS) has determined that the proposed regulatory action will protect the health, safety, and welfare of the citizens of the Commonwealth by strengthening Medicaid policies to ensure the fiscal integrity of the Medicaid program as well as reserving funds for payment of services for individuals who meet the eligibility requirements for the Medicaid program. This action is needed to close loopholes that allow individuals to shelter resources in excess of the Medicaid limits. Such persons who shelter their resources will now be required to pay for their own medical care thereby preserving Medicaid resources.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The sections of the State Plan for Medical Assistance that are affected by this action are Eligibility Conditions and Requirements; Resources and Transfers (12VAC30-40-50, 235, 240, and 300).

DMAS proposes to amend the following sections of the regulations as follows:

- 12VAC30-40-50 and 12VAC30-40-235 to clarify that those medical or remedial expenses incurred during a transfer of assets penalty period shall not be allowed as a deduction in the post eligibility patient pay calculations.
- 12VAC30-40-240 to clarify that current market or fair market value of real property is 100 percent of the tax assessed value and requires holders of savings bonds to make all reasonable efforts to liquidate savings bonds during the mandatory retention period so the money may be used to pay for medical services.
- 12VAC30-40-300 to clarify that multiple, fractional, uncompensated transfers of assets will be treated as one transfer in determining the period of ineligibility.

The current regulations for sections 12VAC 30-40-50 and 12VAC-40-235, specify the medical expenses and reasonable limits on amounts for necessary medical and remedial care not covered under Medicaid. The proposed regulatory action adds to 12VAC 30-40-50 that medical and remedial care expenses incurred as a result of imposition of a transfer of assets penalty period

shall not be allowed as a deduction in the post-eligibility patient pay calculation. The proposed change for 12VAC 30-40-235 stipulates that there shall be no deduction allowed for medical and remedial care expenses that were incurred during a period of ineligibility for Medicaid payment of long-term care services due to the imposition of a transfer of assets penalty period.

12VAC 30-40-240, currently specifies that the market value of real property is determined by simply ascertaining the tax assessed value of the property and applying to it the local assessment rate. The planned action specifically clarifies that the current market value of real property is 100 percent of the tax accessed value. In addition, this section also specifies that bonds are assets which can be liquidated and are considered resources that may be used to pay for medical care. The proposed regulatory action requires that holders of savings bonds must make all reasonable efforts to liquidate savings bonds during the mandatory retention period that may be used to pay for medical services.

Currently under 12 VAC 30-40-300, this section provides procedures applicable to all transfers of resources and specifies that the period of ineligibility begins on the first day of the first month during or after which assets have been transferred for less than fair market value. The ineligibility period is equal to but shall not exceed the number of months, including any fractional portion of a month derived by dividing the total, cumulative uncompensated value of all assets transferred on or after the look back date specified. The proposed regulatory action stipulates that in the event an individual or the individual’s spouse makes multiple fractional transfers in more than one month for less than fair market value on or after the look back date, the total cumulative uncompensated value of all assets transferred during all months will be treated as one transfer in determining the period of ineligibility.

These actions should close loopholes and limit strategies that are currently used by individuals to dispose of or temporarily limit access to their resources with the intent of establishing eligibility for Virginia Medicaid. This regulatory action will require individuals who have taken steps to limit their access to resources while maintaining ownership to make all reasonable efforts to access those resources prior to establishing Medicaid eligibility. This change will also limit the responsibility of the Medicaid program to consider or pay for long-term care expenses incurred during a period of ineligibility for Medicaid payment for long-term care services.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

There are no viable alternatives to this proposed regulatory action. If these regulatory changes are not made, individuals who have assets that could be used to pay for their medical services will continue to be able to shelter their assets to establish and meet Medicaid eligibility requirements, thereby resulting in scarce public dollars being used to pay for their medical services when they could afford to pay for it themselves.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) other alternatives to this proposal, and 3) potential impacts of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Lois Gray, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219; telephone: (804)371-4300; fax: (804)786-1680; and email to: lois.gray@dmas.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

DMAS is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach.

Family impact

Assess the potential 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.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children and will encourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children. It does not strengthen or erode the marital commitment, but may decrease disposable family resources by requiring the individual to use his own resources prior to establishing Medicaid eligibility.