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

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30-20-180
<b>Regulation title</b>	Administration of Medical Assistance Services: Definition of a claim by service
<b>Action title</b>	Electronic Claims Submission Requirement
<b>Final agency action date</b>	July, 1, 2011
<b>Document preparation date</b>	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

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*.

### Preamble

*The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.*

- 1) Please explain why this is an emergency situation as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The Administrative Process Act [Section 2.2-4011(B)] states that an agency may adopt regulations in an “emergency situation” that is defined, in part, as a situation in which Virginia statutory law, the Virginia appropriation act, or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt

under the provisions of Subdivision A.4 of § 2.2-4006. This suggested emergency regulation meets the standard at *COV* 2.2-4011(B) as discussed below.

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled Administration of Medical Assistance Services: Definition of a claim by service - Electronic Claims Submission Requirement (12 VAC 30-20-180) and also authorize the initiation of the promulgation process provided for in § 2.2-4007.

### Legal basis

*Other than the emergency authority described above, 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 and 325, 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.

### 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 action is to comply with Appropriation Act, Item 300 H of the 2011 General Assembly requiring DMAS to implement a mandatory electronic claims submission process, including the development of an exclusion process for providers who cannot submit claims electronically.

### 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.*

Item 300 H of the 2011 Virginia Appropriations Act directs DMAS as follows:

*The Department of Medical Assistance Services shall mandate the electronic submission of claims for covered services rendered by participating providers in the fee-for-service program under the State Plans for Title XIX and XXI of the Social Security Act, and any waivers thereof, as well as the use of electronic funds*

*transfer for the payment of such claims to providers. The department shall implement this requirement in a phased approach beginning with providers enrolling on or after October 1, 2011, with expansion to all existing providers by July 1, 2012. The department shall develop a process by which the individual circumstance of a provider may allow for exclusion from the electronic claims mandate without impact on participation, at the sole discretion of the department. The department shall have authority to promulgate emergency regulations to implement this amendment within 280 days from the enactment of this act.*

**Substance**

*Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.*

Approximately 84% of all Medicaid claims are currently filed electronically with DMAS. A survey of participating Medicaid providers who submit claims on paper was performed to better understand why claims are filed on paper when electronic filing is available, and to understand any barriers that may exist to filing electronically. The survey found that the main barriers to electronic filing were cost and inadequate technology. However, a majority of providers indicated that they transact business electronically with commercial carriers and would welcome the change if these barriers could be addressed for Medicaid.

DMAS will be implementing a Web-based Direct Data Entry solution during the 2<sup>nd</sup> Quarter of FY 2011 that will allow for electronic claim submission at no cost to the provider and at a lower cost for Virginia to process these claims. Language mandating the participation of providers via Electronic Funds Transfer and Electronic Claims Submissions is part of an overall strategy to simplify the claims submission process, increase processing efficiency, lower costs for both the Commonwealth and the Virginia Medicaid provider community, and support collaboration and consistency in business practices with other commercial carriers and Medicare.

**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 describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.*

DMAS has little discretion in implementing the General Assembly mandate except in the area of the development of exclusions to mandatory electronic claims submission. In this emergency regulation DMAS is attempting to address the common reasons for which providers may be unable to submit claims electronically. DMAS anticipates that public comment will bring to DMAS' attention additional reasons for claiming exclusions that will be addressed in the proposed and the final regulations.

## 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 meeting is to be held to receive comments on this notice.*

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DMAS is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal; 2) the costs and benefits of the alternatives stated in this background document or other alternatives; and 3) potential impacts of the regulation. DMAS is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs; 2) probable effect of the regulation on affected small businesses; and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Peter Lubinkas, Dept. of Medical Asst. Services, 600 East Broad St., Richmond, Virginia 23219, (804) 786-3220, [Peter.Lubinkas@dmas.virginia.gov](mailto:Peter.Lubinkas@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.

## Participatory approach

*Please indicate the extent to which an ad hoc advisory group will be used 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.*

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DMAS will use the participatory approach to develop a proposal if it receives at least 25 written requests to use the participatory approach prior to the end of the public comment period. Persons requesting the agency use the participatory approach and interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and their organization (if any). Notification of the composition of the advisory committee will be sent to all applicants.

## 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.*

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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, and will not decrease disposable family income.