



Fast Track Proposed Regulation Agency Background Document

Agency name	DEPT. OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-40-280
Regulation title	Eligibility Conditions and Requirements
Action title	Update to Medicaid Works Program Income Limit
Date this document prepared	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

This action makes changes in the Medicaid Buy-In (MBI) program, which was created under the flexibility permitted under the Deficit Reduction Act of 2005 (DRA). One of the issues faced by Medicaid enrollees with disabilities is that, while many of them have the capacity to be gainfully employed, the extra income they earn could cause them to lose their Medicaid eligibility due to excess income. Because one purpose of the program is to provide incentives for Medicaid recipients to be employed, eligible enrollees are permitted higher income limits.

This regulatory action will implement a change in the Medicaid buy-in program, MEDICAID WORKS, as authorized by the 2011 General Assembly. House Bill 2384/Chapter 506 of the 2011 General Assembly directed DMAS to increase the maximum allowable gross earnings for participants in the program to the maximum gross income amount allowed under the Ticket to Work and Work Incentives Improvement Act that does not trigger the collection of mandatory premiums. This amount is calculated to be \$75,000 in gross annual earnings.

This regulatory action will also adjust MEDICAID WORKS policy to mitigate the negative impact (loss of Medicaid eligibility) of higher earned income or higher unearned income as a result of participating in this work incentive program. Eligibility policy will be amended to

enable a disregard for any increase in the amount of unearned income in the Social Security Disability Insurance (SSDI) payment resulting from employment as a worker with disabilities eligible for assistance under the Ticket to Work and Work Incentives Improvement Act, or as a result of a Cost of Living Adjustment (COLA) adjustment to the SSDI payment. Policy also will be amended to enable a disregard for any unemployment insurance payments received by an enrollee as a result of loss of employment through no fault of his own.

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.

I hereby approve the foregoing Agency Background document with the attached amended pages Eligibility Conditions and Requirements: Medicaid Works (12 VAC 30-40-280) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

/s/ 3/1/2012

Date

/s/ Cynthia B. Jones

Cynthia B. Jones, Director

Dept. of Medical Assistance Services

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 *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. This action is premised upon the mandate in House Bill 2384/Chapter 506 of the 2011 General Assembly.

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.

This regulatory action is necessary to implement HB 2384/Chapter 506 as passed by the 2011 General Assembly, which will allow participants in the MEDICAID WORKS program to earn up to \$75,000 while still retaining eligibility for Medicaid benefits. In addition it will fix several unintended inequities that the Agency discovered after the implementation of the program.

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?

Please note: If an objection to the use of the fast-track process is received within the 30-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 objections 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.

These changes to the Medicaid Works program are based upon a General Assembly mandate or are fixes to unforeseen issues that arose after the program began. These changes all reinforce the purpose of the program – to permit Medicaid enrollees who desire to better their lives by going back to work at some level, without endangering their Medicaid eligibility. These changes are non-controversial and therefore the Agency has chosen the Fast-Track option for making these changes.

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.)

As noted above, this regulatory action will allow participants in the MEDICAID WORKS program to earn up to \$75,000 while still retaining eligibility for Medicaid benefits. In addition it will fix several unintended inequities that the Agency discovered after the implementation of the program.

It will also correct an unintended consequence, or oversight that came to light after the initial regulations were promulgated, whereby individuals with disabilities, who receive a modest cash benefit (unearned income) from Social Security Disability Insurance (SSDI) and who elect to

enroll in MEDICAID WORKS, actually can become ineligible for the MEDICAID WORKS program if their earned income causes their SSDI benefit to increase. While MEDICAID WORKS program participants may currently have gross annual earnings of as much as \$44,300, their unearned income may not exceed 80% of the federal poverty level, equaling \$745 per month. The entry income level for eligibility into the MEDICAID WORKS program is \$745 per month.

This is clearly problematic because the intent of the MEDICAID WORKS program is to encourage Medicaid enrolled individuals to go back to work and earn higher income while retaining Medicaid eligibility. However, achieving higher income can result in a higher SSDI benefit payment which may, in turn, have a significant negative impact by making the individual ineligible for Medicaid. Establishing a disregard for any amount of SSDI payment that increases as a result of work while participating in MEDICAID WORKS will correct this unforeseen and unfair consequence of the individual succeeding in their employment efforts. This action also would also allow for a disregard of any COLA increases so as not to discontinue Medicaid eligibility.

This action will also correct an additional unintended consequence of the initial regulations whereby an individual with disabilities who experiences a loss of employment through no fault of their own (e.g., lay off) becomes eligible for unemployment insurance benefits and acceptance of this unearned income payment causes the individual to become ineligible for continued Medicaid coverage. Medicaid policy requires that individuals who are eligible for unemployment insurance payments must apply for these cash benefits, which in turn may make the individual ineligible for Medicaid. Again, the intent of the MEDICAID WORKS program is to encourage individuals to go back to work and earn higher income while retaining eligibility for Medicaid. The program has existing policy in place to allow an individual to remain eligible for MEDICAID WORKS for up to six months if he experiences a loss of employment through no fault of his own. Penalizing the individual for going to work, but then losing his job, is a direct contradiction of the aforementioned policy of a six month grace period and to what the program was created to accomplish.

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.

These changes may assist employers because this action has the potential to expand the labor pool by adding new employees with disabilities who have proven themselves to be valuable, dependable resources. Individuals with disabilities can have higher income and still retain Medicaid coverage. There are no advantages or disadvantages to the agency or the Commonwealth.

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.

These proposals are not more restrictive and federal requirements.

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.

No particular localities will be affected.

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.

There are no alternative regulatory methods to accomplish these objectives.

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 enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	\$0
Projected cost of the new regulations or changes to existing regulations on localities.	\$0
Description of the individuals, businesses or	Individuals with disabilities, those receiving Social

<p>other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Security benefits (enrolled in SSI and SSDI), small and large businesses have greater availability of quality employees</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>5 MEDICAID WORKS participants</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and 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>\$0</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Enable program participants to earn higher income and gain greater independence from public assistance programs. Correct unforeseen negative impact of program design has on some enrollees.</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 not viable alternatives to the proposal that are less burdensome or intrusive.

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.

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.

Detail of changes

Please list 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 describe 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.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC 30-40-280(G)	G(1) and G(2)	None	Added two new disregards to reverse unintended consequence of dropping enrollment for individuals whose income increased due to COLA adjustments or Unemployment Insurance Benefits
12 VAC 30-40-280(G)		Commonwealth shall disregard earned income up to 200% of the federal poverty level	Commonwealth shall disregard earned income up to 200% of the federal poverty level <u>\$75,000</u> Increased earned income disregard to maximum permitted by federal government