



Virginia Department of Planning and Budget **Economic Impact Analysis**

12 VAC 30-20 – General Provider Administrative Appeals
Department of Medical Assistance Services
May 13, 2015

Summary of the Proposed Amendments to Regulation

The Department of Medical Assistance Services (DMAS) proposes to 1) address the manner in which alleged deficiencies in case summaries can be resolved and the means by which documentation can be transmitted in an informal appeal, 2) allow extension of 45 days limitation in which the hearing officer must conduct a formal hearing if agreed by all parties, and 3) update the regulations by clarifying and reorganizing the current requirements.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

The main purposes of the proposed changes are to address the manner in which alleged deficiencies in case summaries can be resolved and the means by which documentation can be transmitted in an informal appeal. In a recent case, a Circuit Court ruled and the Appeals Court affirmed an adverse decision against DMAS's decision on a provider appeal.¹ According to DMAS, the case has necessitated new rules for addressing the alleged deficiencies in case summaries and the means by which documentation can be transmitted.

To address the manner in which alleged deficiencies in case summaries can be resolved, one of the proposed changes will require the providers to notify DMAS of alleged deficiencies within 12 days of the due date of the case summary. Upon receipt of the provider's notice, DMAS will have 12 days to address the alleged deficiency. With this change, DMAS will be assured to know if there are any issues with its case summary, and if so be able to address in a

¹ See VA Department of Medical Assistance Services v. Patient Transportation System, 58 Va.App.328, 709 S. E. 2d 188 (2011) for details.

given time frame. The providers on the other hand will be afforded a chance to bring to DMAS's attention any deficiencies and have DMAS address it.

Another change will clarify that documents can be transmitted by courier or hand delivery, facsimile, electronic mail, or electronic submission. Current language uses the term "mail" and the provider in the appealed case challenged whether electronic mailing of case summary was sufficient. In order to remove any ambiguity the current use of "mail" may create, the proposed regulations clarify that electronic transmittal of documents is allowed.

These two changes will address two issues the current regulation has which came out during the recent litigation. Thus, the proposed changes should produce a net benefit in that they will improve communications regarding the sufficiency of case summaries and allow more modern and cost effective means of document transmittal between the providers and DMAS.

The proposed changes will also allow an extension of 45 days limitation in which the hearing officer shall conduct a formal hearing if agreed by the hearing officer, DMAS, and the provider. This change is likely to produce a net benefit as it would allow additional time to hold a hearing only if agreed by all parties.

Finally, DMAS states that these appeal regulations were originally promulgated in 2000 and have been substantively revised only once since that time. Consequently DMAS proposes a number of updates. These updates include clarifications of the current requirements and authorities the regulation provides and reorganization of sections within the regulation. For example, they clarify the conditions when an administrative dismissal may occur; clarify whenever an informal appeal is required pursuant to a remand by a court order, all time periods run effective as of the date stamped by DMAS on documentation containing the remand; move the timelines set in section 560 (E) to 560 (B). These changes do not contain any new rules or modify existing rules. Thus, they are not expected to produce any significant economic impact other than improving the clarity and readability of already existing requirements.

Businesses and Entities Affected

These regulations apply to approximately 52,000 providers. Most of the providers, with the exception of 108 hospitals and 273 nursing facilities, are considered small businesses. In fiscal year 2014, there were 6,260 informal appeals of which 113 turned into a formal appeal.

Localities Particularly Affected

The proposed regulations apply statewide.

Projected Impact on Employment

No significant impact on employment is expected.

Effects on the Use and Value of Private Property

No significant impact on the use and value of private property is expected.

Small Businesses: Costs and Other Effects

Most of the 52,000 providers these regulations apply to are considered small businesses. Expected economic effects discussed above apply to them.

Small Businesses: Alternative Method that Minimizes Adverse Impact

The proposed amendments are not anticipated to have an adverse impact on small businesses.

Real Estate Development Costs

No effect on real estate development costs is expected.

Legal Mandate

General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 17 (2014). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulation would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulation will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,

- the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules (JCAR) is notified at the time the proposed regulation is submitted to the *Virginia Register of Regulations* for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

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