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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Department of Medical Assistance Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	12 VAC 30-40-290
<b>Regulation title(s)</b>	More Liberal Methods of Treating Resources Under § 1902(R)(2) of the Act: § 1902(F) States
<b>Action title</b>	Property Sales at Less Than Taxed Assessed Value
<b>Date this document prepared</b>	11/16/2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.*

This regulatory action amends the existing regulation covering the treatment of real property for Medicaid eligibility purposes. The existing regulation allows real property be excluded from the Medicaid eligibility determination if the individual is making a reasonable effort to sell the property at or for slightly less than fair market value (FMV), which is generally the property's tax assessed value; the ownership of real property is not a bar to Medicaid eligibility as long as reasonable efforts to sell the property continue to be made.

Under the old regulatory rules, after the recipient had actively marketed the property at or for slightly less than its FMV for 12 months (between 75% and 100% of FMV), the recipient could request permission from the local department of social services (DSS) handling the case to sell the property at less than 75

percent (%) of FMV without the sale being considered an uncompensated transfer of assets. The recipient must provide documentation that the sale price is the best price the recipient could expect to receive. The proposed amendment to this regulation removes the requirement for the local DSS to approve the sale of real property at less than 75% of FMV. Should the recipient sell the property at less than 75% of FMV, the recipient must still provide adequate documentation that the sale price was the best price the recipient could receive.

The changes also include editorial amendments for consistent use of language (current market value is changed to fair market value as the two terms are interchangeable) and to conform to the Registrar's style requirements.

### 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 Regulatory Review Summary entitled Reasonable Effort to Sell Real Property with the attached amended regulations (12 VAC 30– 40– 290) and adopt the action stated therein. I certify that this fast track regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012.1, of the Administrative Process Act.

11/19/2015

Date

Cynthia B. Jones/LN

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 citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

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.

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe 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.

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The purpose of this action is to remove the requirement for the local DSS to give permission to sell the real property at less than 75% of FMV. The function of the local DSS eligibility staff is to evaluate applicants' and recipients' financial situation relative to Medicaid policy and state law, not guide or direct financial decisions. Removing the requirement will streamline the Medicaid eligibility determination process. The recipient will not have to wait for the local DSS to render permission before selling the property. Staff will review the supporting documentation after the sale of the real property, rather than grant permission for the sale.

### 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?

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This regulatory action is being promulgated as a fast track action because it is expected to be non-controversial. The action will streamline the Medicaid eligibility determination process for both the recipients of Medicaid and the local DSS agencies that maintain Medicaid cases (at no cost to the agencies involved) by removing the requirement to ask permission to sell property. This regulatory action will result in a less restrictive manner in which Medicaid members can conduct property sale activities. No changes to any other aspect of the regulation are being proposed.

### Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

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The section of the State Plan for Medical Assistance that is affected by this action is "Eligibility Conditions and Requirements".

For the purposes of Medicaid eligibility, an applicant's real property may be excluded during the eligibility determination process if he is making a reasonable effort to sell the property as outlined in the State Plan. Once the individual has been determined eligible, the individual may remain enrolled in Medicaid as long as reasonable efforts to sell continue to being made.

After the recipient has actively marketed the property at its FMV for 12 months, the recipient may lower the price on the real property without affecting his potential eligibility for Medicaid-covered long-term care. This provision is significant because without the change in this regulation, uncompensated transfers of assets made after the "look back" date (60 months prior to an individual being both institutionalized and eligible for Medicaid) result in a penalty period, during which Medicaid cannot cover payment for the LTC services.

After 12 months of being marketed at FMV, the treatment of the sale of real property for less than FMV depends on the price for which it was sold. The sale of the property for between 100% of FMV and 75% of FMV does not require that the rationale for lowering the price be submitted to the local DSS. Under the amended regulation, if the recipient sells the property for below 75% of the FMV, the individual will no longer need to seek permission to sell the property from the local DSS. However, the sale for less than 75% of FMV will trigger uncompensated asset transfer policy and a possible penalty period unless proper

documentation indicating why the recipient could not expect to sell the property for more than the final sale price is provided.

### 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.*

The advantage to the public is that the proposed amendment will streamline the Medicaid eligibility determination process for both the recipients of Medicaid and the local DSS agencies that maintain Medicaid cases **by removing the requirement to ask permission to sell property**. This will eliminate a step in the Medicaid eligibility determination process for individuals who need medical assistance. The advantage to the Commonwealth is that local DSS eligibility staff will **evaluate applicants and recipients financial situation relative to Medicaid policy and state law, not guide or direct financial decisions**. Staff will review the supporting documentation after the sale of the real property rather than grant permission for the sale. There are no disadvantages to the public 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.*

There are no requirements more restrictive than federal requirements contained in these recommendations.

### 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.*

There will be no localities that are more affected than others, as these requirements will apply statewide.

### Regulatory flexibility analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

This regulatory action is not expected to affect small businesses, as it does not impose compliance or reporting requirements, deadlines for reporting, and does not establish performance standards to replace design or operational standards.

### 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.

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including:</b>                  a) fund source / fund detail; and                  b) a delineation of one-time versus on-going expenditures</p>	<p>There is no projected cost associated with implementing the amendment.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>There is no projected cost to localities for the amendment to the existing regulation.</p>
<p><b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>The individuals who will be affected by the amendment are Medicaid applicants/recipients with real property and local DSS eligibility staff.</p>
<p><b>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.</b> Small business means a business entity, including its affiliates, that:                  a) is independently owned and operated and;                  b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Because the amendment eliminates only one step of an existing real property exclusion, no additional individuals will be affected. No small businesses will be affected by the amendment.</p>
<p><b>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 including:</b>                  a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and                  b) 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>There is no projected cost to individuals, businesses, or other entities for the amendment to the existing regulation.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>The amendment is designed to streamline the eligibility process for the Medicaid recipient and local DSS eligibility staff.</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.*

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The amendment eliminates a step in the existing real property exclusion. The alternative is to not eliminate the step. Eliminating the step is the least burdensome alternative because it relieves the Medicaid applicant/recipient and the local DSS eligibility staff of the requirement to seek or give permission to sell the real property for less than 75% FMV.

### Public participation notice

*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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

### 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.*

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The amendment does not strengthen nor erode the authority or rights of parents in the education, nurturing, and supervision of their children. It does not encourage nor 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 nor erode the marital commitment. It does neither increase nor decrease disposable family income.

### Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

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Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
12 VAC 30-40-290 D.4	N/A	<p>If the recipient requests to sell his property at less than 75% of the assessed value, he must submit documentation from the listing realtor, or knowledgeable source if the property is not listed with a realtor, that the requested sale price is the best price the recipient can expect to receive for the property at this time. Such documentation shall request permission from DSS to sell the property at the lower price. Only if DSS agrees to the property sale at the documented price, shall the individual not be disqualified under the transfer of property rules. (The proceeds of the sale will be counted as a resource in determining continuing eligibility.)</p>	<p>The proposed amendment eliminates the requirement for the recipient to seek permission from the local DSS to sell the property at less than 75% of the tax assessed value. The amendment eliminates a step in the Medicaid eligibility determination process and local DSS eligibility staff will evaluate applicants and recipients financial situation relative to Medicaid policy and state law, not guide or direct financial decisions.</p> <p>The amended wording is below:</p> <p>If the recipient sells his property at less than 75% of the assessed value, he shall submit documentation from the listing realtor, or knowledgeable source if the property is not listed with a realtor, that the requested sale price is the best price the recipient could expect to receive for the property.</p>