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

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12 VAC 30-30 and 12 VAC 30-40
Regulation title	Groups Covered and Agencies Responsible for Eligibility Determinations, and Eligibility Conditions and Requirements.
Action title	"Medicaid Works" a Medicaid Buy-In Program
Document preparation date	

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 review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Preamble

The APA (Section 2.2-4011) states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 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) states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a

regulation to take effect no later than 280 days from its effective date. This suggested emergency regulation meets the standard at COV 2.2-4011(ii) as discussed below.

The Item 302 X of the 2006 Appropriation Act directed DMAS to implement a Medicaid Buy-In program in January of 2007. This action is intended to satisfy that mandate; however, DMAS was unable to proceed with its original program design because it was disapproved by the federal Medicaid authority. DMAS submitted a revised program that received the required federal approval in late December, significantly delaying the implementation of the Buy-In program.

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.

This regulatory action is intended to implement a mandated Medicaid Buy-In program per the requirement of the 2006 Appropriation Act. This new program, called “Medicaid Works,” requires the amendment of two regulations addressing Medicaid eligibility. 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. The Medicaid Works Buy-In program will help protect the health and welfare of the citizens of the Commonwealth by creating an incentive for disabled Medicaid enrollees, who desire to be employed, to have added income that will not count against their eligibility income limits. This reduces the financial restrictions to which such enrollees may be subject.

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, 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. The 2006 Appropriation Act Item 302 18c directed this agency action.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

This action is intended to implement a new Medicaid Buy-In program, Medicaid Works, required by the 2006 Virginia Appropriation Act, Item 302 X. Medicaid Works is a work incentive initiative requiring the amendment of the Medicaid State Plan regarding eligibility. This innovation program, permitted under section 1902(r)(2) of the Social Security Act, is designed to create greater flexibility in establishing Medicaid eligibility for working individuals with disabilities. The individuals eligible for this program do not comprise a new eligibility group but are within the existing Aged, Blind, Disabled 80% of federal poverty level population. Because one purpose of the program is to provide incentives for Medicaid recipients to be employed, eligible enrollees are permitted higher income limits. Finally, program enrollees may have cost-sharing charges set according to a sliding scale based upon the enrollee’s income.

One of the issues faced by Medicaid enrollees with disabilities is that, while many of them could be gainfully employed, the extra income they could earn, as well as savings accounts funded from earned income that is set aside in an account, may cause them to lose their Medicaid eligibility. The Medicaid Works Buy-In program will help protect the health and welfare of the citizens of the Commonwealth by creating a work incentive for Medicaid enrollees with disabilities, if they desire to be employed and to have added income or resources that will not count against their Medicaid eligibility limits. This reduces the financial restrictions to which these enrollees may be subject, and encourages greater responsibility and self-determination in eligible enrollees.

In addition to the eligibility disregard for earned income, the Medicaid Works Buy-In program incorporates greater financial resource disregards as well. Medicaid eligibility is based upon both income and asset limits. For purposes of continuing Medicaid eligibility, income that is not spent within the month it is earned is counted as a financial resource. Any money placed in IRS-sanctioned retirement accounts, medical savings or reimbursement accounts, independence accounts or education accounts are counted towards an individual’s Medicaid financial resource limit. Once an individual is enrolled in the Medicaid Works program, their earned income limits are higher, and any income placed in the accounts described above are disregarded for eligibility purposes. In addition, the Medicaid Works program adds the Work Incentive Account, in which enrollees may place earned income, up to a limit, which is also disregarded. Income placed in this account may be used for any purpose. If an enrollee leaves the program, any income remaining in the Work Incentive Account is disregarded for up to a year following their withdrawal from Medicaid Works. Any income placed in the other IRS-approved accounts described above will continue to be disregarded as long as the individual remains in the general Medicaid program.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-30-20		Optional groups other than the medically needy.	Adds a new subsection describing the initial and continuing eligibility requirements for the Medicaid Works program.

	12VAC30-40-105		New VAC section that describes both the population eligible for the program and the cost-sharing (premium) requirement for continuing Medicaid Works enrollment.
12VAC30-40-280.		More liberal income disregards	Adds a new subsection that sets out the income limits and describes the Work Incentive Account to be used by program enrollees that is required in order to have their income disregarded for initial and continuing Medicaid eligibility.
12VAC30-40-290.		More liberal methods of treating resources under §1902(r)(2) of the Act: §1902(f) states	Adds a new subsection that describes the resource treatment of the Work Incentive Accounts for program enrollees.

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.

Initially the Agency submitted a Buy-In package for federal approval that was based upon the Balanced Budget Act of 2005. This package contained alternate benefits and addressed a sub-part of the 80% Aged, Blind and Disabled eligibility group. The federal Medicaid authority did not approve this initial package. The current package reflected in the attached regulations was created based upon a federally approved model pursuant to the federal Ticket to Work and Work Incentive Act. It contains no alternative benefits. In addition, although the Agency considered including a premium payment component as permitted under federal law, the Agency declined to include Buy-In enrollee premiums at this time.

Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; it does encourage greater 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.