



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30-50 12 VAC 30-60
<b>Regulation title</b>	Amount, Duration, and Scope of Medical and Remedial Care Services Standards Established and Methods Used to Assure High Quality of Care
<b>Action title</b>	Children's Exemption from Hospice Election
<b>Final agency action date</b>	
<b>Document preparation date</b>	

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The sections of the State Plan for Medical Assistance that are affected by this action are Amount, Duration, and Scope of Medical and Remedial Care Services (12 VAC 30-50) (Attachment 3.1 A&B) and Standards Established and Methods Used to Assure High Quality of Care (12 VAC 30-60) (Attachment 3.1-C).

Currently, the policy for persons, who are diagnosed as having less than six months to live and who choose to receive hospice services rather than active treatment, must sign an election statement. This hospice election statement provides: (i) identification of the hospice that will provide care to the individual; (ii) the individual's or representative's acknowledgement that he has been given a full understanding of the palliative rather than curative nature of hospice care as it relates to the individual's terminal illness; (iii) acknowledgement that certain Medicaid

services are waived by the election of hospice services; (iv) the effective date of the election; (v) the signature of the individual or representative.

The Patient Protection and Affordable Care Act (PPACA) (HR 3590) section 2302 provided that children, as defined by the state, must be excluded from the election statement’s provision concerning waiving certain Medicaid services. This provision of PPACA requires the states to continue to provide all Medicaid covered services for children even if they choose to receive hospice care.

PPACA section 2302 states: “CONCURRENT CARE FOR CHILDREN”

a) IN GENERAL.-Section 1905(o)(1) of the Social Security Act (42 U.S.C. 1396d(o)(1)) is amended—(1) in subparagraph (A), by striking “subparagraph (B)” and inserting “subparagraphs (B)( and (C)””; and (2) by adding at the end the following new subparagraph: “(C) A voluntary election to have payment for hospice care for a child (as defined by the State) shall not constitute a waiver of any rights of the child to be provided with, or to have payment made under this title for, services that are related to the treatment of the child’s condition for which a diagnosis of terminal illness has been made.”

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 regulatory action is mandated by federal law and therefore qualifies for the exemption provided at COV § 2.2-4006(A)(4)(c).

**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 State Plan pages entitled Children’s Exemption from Hospice Election (12 VAC 30-60-130) 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.

\_\_\_\_\_  
Date

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Gregg A. Pane, M.D., MPA, Director  
Dept. of Medical Assistance Services

## Family impact

*Assess the impact of this regulatory action on the institution of the family and family stability.*

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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, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.