



COMMONWEALTH of VIRGINIA
Office of the Attorney General

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Attorney General

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MEMORANDUM

TO: EMILY MCCLELLAN
Regulatory Supervisor
Department of Medical Assistance Services

FROM: JENNIFER L. GOBBLE *JLG*
Assistant Attorney General

DATE: March 24, 2015

SUBJECT: Exempt Final Regulations - Client Appeals; ACA Appeal Changes

I have reviewed the attached exempt final regulations that will implement federally mandated changes derived from the Affordable Care Act and federal regulations concerning fair hearings and appeal processes. The amendments to the regulations also include minor technical changes.

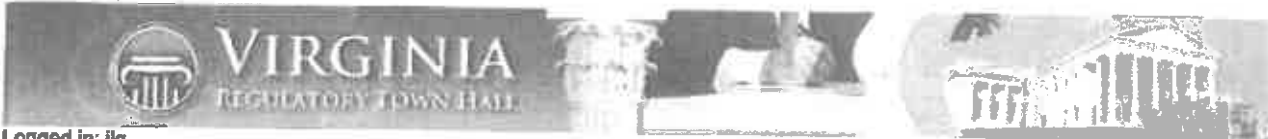
Based on my review, the Director of DMAS, acting on behalf of the Board of Medical Assistance Services, pursuant to Virginia Code §§ 32.1-324 and 325, has the authority to amend these regulations and has not exceeded that authority. The amendments to the regulations do not materially differ from the federal requirements.

It is my view that amendment of these regulations is exempt from the procedures of Article 2 of the Administrative Process Act pursuant to Virginia Code §§ 2.2-4006(A)(3) and 2.2-4006(A)(4)(c). If you have any questions, please contact me at (804) 786-4905.

cc: Kim F. Piner, Esquire
Senior Assistant Attorney General/Chief

Virginia.gov

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Logged in: jlg

Final Text

Action: ACA Appeal Changes

Stage: Final

3/19/15 8:12 AM [latest]

12VAC30-110-10

THE TEXT OF THIS REGULATION IS IN DRAFT FORM AND SHOULD NOT BE RELIED UPON FOR LEGAL INTERPRETATION.

Part I

Client Appeals

Subpart I

General

Article 1

Definitions

12VAC30-110-10. Definitions.

The following words and terms, when used in these regulations, shall have the following meanings unless the context clearly indicates otherwise:

Action means a termination, suspension, or reduction of Medicaid eligibility or covered services. It also means determinations by skilled nursing facilities and nursing facilities to transfer or discharge residents, and adverse determinations made by a State with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Social Security Act.

Adverse determination means a determination made in accordance with sections 1919(b)(3)(F) or 1919(e)(7)(B) of the Social Security Act that the individual does not require the level of services provided by a nursing facility or that the individual does or does not require specialized services.

"Agency" means:

1. An agency which, on the department's behalf, makes determinations regarding applications for benefits provided by the department; and
2. The department itself.

"Appellant" means an applicant for or recipient of medical assistance benefits from the department who seeks to challenge an adverse action regarding his benefits or his eligibility for benefits, and a nursing facility resident who seeks to challenge a transfer or discharge. Appellant also means an individual who seeks to challenge an adverse determination regarding services provided by a nursing facility.

Date of action means the intended date on which a termination, suspension, reduction, transfer or discharge becomes effective. It also means the date of the determination made by a State with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

"Department" means the Department of Medical Assistance Services.

"Division" means the department's Appeals Division of Client Appeals.

"Final decision" means a written determination by a hearing officer which is binding on the department, unless modified on appeal or review.

"Hearing" means the evidentiary hearing described in this regulation, conducted by a hearing officer employed by the department.

"Representative" means an attorney or agent who has been authorized to represent an appellant pursuant to these regulations.

"Send" means to deliver by mail or in electronic format consistent with 42 CFR 431.201.

12VAC30-110-20

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Article 2

The Appeal System

12VAC30-110-20. Appeals Division of Client Appeals.

~~The division maintains an appeals system for appellants to challenge adverse actions regarding services and benefits provided by the department. Appellants shall be entitled to a hearing before a hearing officer. See Subpart II of these regulations.~~

A. The division maintains an appeals system for appellants to challenge actions, as defined in 42 CFR 431.201, regarding services and benefits provided by the department, and adverse determinations regarding services provided by a nursing facility in accordance with 1919(b)(3)(F) or 1919(e)(7)(B). Appellants shall be entitled to a hearing before a hearing officer. See Subpart II of these regulations.

B. In accordance with 42 CFR 435.918, the agency makes electronic appeal correspondence available to applicants and recipients. Applicants and recipients may elect to receive appeal correspondence in electronic format or by regular mail and may change such election.

12VAC30-110-70

Article 4

Notice and Appeal Rights

12VAC30-110-70. Notification of adverse agency action.

The agency which takes action or makes an initial adverse determination shall inform the applicant or recipient in a written notice:

1. What action or adverse determination the agency intends to take;
2. The reasons for the intended action or adverse determination;
3. The specific regulations that support or the change in law that requires the action or adverse determination;
4. The right to request an evidentiary hearing, and the methods and time limits for doing so;
5. The circumstances under which benefits are continued if a hearing is requested (see 12VAC30-110-100); and
6. The right to representation.

12VAC30-110-80

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12VAC30-110-80. Advance notice.

When the agency plans to terminate, suspend or reduce an individual's eligibility or covered services, the agency must ~~mail~~ send the notice described in 12VAC30-110-70 at least 10 days before the date of action, except as otherwise permitted by federal law.

12VAC30-110-100

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12VAC30-110-100. Maintaining services.

A. If the agency ~~mails~~ sends the 10-day notice described in 12VAC30-110-80 and the appellant files his Request for Appeal before the date of action, his services shall not be terminated or reduced until the hearing officer issues a final decision unless it is determined at the hearing that the sole issue is one of federal or state law or policy and the appellant is promptly informed in writing that services are to be terminated or reduced pending the final decision.

B. If the agency's action is sustained on appeal, the agency may institute any available recovery procedures against the appellant to recoup the cost of any services furnished to the appellant, to the extent they were furnished solely by reason of subsection A of this section.

12VAC30-110-110

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Article 5

Miscellaneous Provisions

12VAC30-110-110. Appeals Division records.

A. Removal of records. No person shall take from the division's custody any original record, paper, document, or exhibit which has been certified to the division except as the Director of ~~Client~~ the Appeals Division authorizes, or as may be necessary to furnish or transmit copies for other official purposes.

B. Confidentiality of records. Information in the appellant's record can be released only to a properly designated representative or other ~~person(s)~~ person or persons named in a release of information authorization signed by an appellant, his guardian or power of attorney.

C. Fees. The fees to be charged and collected for any copies will be in accordance with Virginia's Freedom of Information Act or other controlling law.

D. Waiver of fees. When copies are requested from records in the division's custody, the required fee shall be waived if the copies are requested in connection with an individual's own review or appeal.

12VAC30-110-140

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12VAC30-110-140. Place of filing a Request for Appeal.

A Request for Appeal shall be ~~delivered or mailed~~ sent to the Appeals Division of ~~Client Appeals~~.

12VAC30-110-160

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12VAC30-110-160. Time limit for filing.

A Request for Appeal shall be filed within 30 days of the appellant's receipt of the notice of an adverse action or adverse determination described in 12VAC30-110-70. It is presumed that appellants will receive the notice ~~three~~ five days after the agency mails the notice unless the appellant shows that he did not receive the notice within the five day period. A Request for Appeal on the grounds that an agency has not acted with reasonable promptness may be filed at any time until the agency has acted.

12VAC30-110-285

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12VAC30-110-285. Appeals Division access to agency records..

A hearing officer shall have access to agency information necessary to issue a proper hearing decision that is sound and legally supportable, including information concerning state policies and regulations.

12VAC30-110-350

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12VAC30-110-350. Dismissal of Request for Appeal.

Request for Appeal may be dismissed if:

1. The appellant or his representative withdraws the request in writing; or
2. The appellant or his representative fails to appear at the scheduled hearing without good cause, and does not reply within 10 days after the hearing officer maile sends an inquiry as to whether the appellant wishes further action on the appeal.