



Exempt Action Final Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC <u>30 - 110</u>
Regulation title	Client Appeals
Action title	ACA Appeal Changes
Final agency action date	August 15, 2014
Document preparation date	June 30, 2014

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, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

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.

These changes incorporate federally mandated changes deriving from the Affordable Care Act, and implemented in federal regulations, regarding: (i) providing individuals with a choice to receive notices and information in electronic format or by regular mail and permitting changes in that choice; (ii) increasing the amount of time from 3 days to 5 days in which individuals will be considered to have received notices; (iii) mandating that DMAS hearing officers have access to agency records required to formulate appeal decisions, and; (iv) other technical changes such as changing the name of the DMAS Division of Client Appeals to Appeals Division.

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 Summary with the attached amended regulations, Client Appeals/ACA Appeal Changes (12 VAC 30-110 sections 10, 20, 80, 100, 110, 140, 160, and 350; 12 VAC 30-110-285 is newly created) and adopt the action stated therein. I certify that this final exempt regulatory action has completed all the requirements of the *Code of Virginia* § 2.2-4006(A) of the Administrative Process Act.

8/15/2014

/s/ for Cynthia B. Jones/ln

Date

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.

The Centers for Medicare and Medicaid Services promulgated final regulations, as published in the *Federal Register* dated 07/15/2013, affecting fair hearings and appeal processes. Federal regulations §§ 42 CFR 431.201, 431.211, 431.231 and 431.240 establish the need for these DMAS regulatory changes.

DMAS changes to its Client Appeals regulations (12 VAC 30-110-10 et seq.) conform to these federal requirements; therefore, this action is exempt from public comment, under the authority of the *Code of Virginia* § 2.2-4006(A)(4)(c), as these changes do not materially differ from the federal requirements.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.

CURRENT POLICY

DMAS has its Client Appeals regulations in Chapter 110, sections 10 through 370, of the Virginia Administrative Code. These regulations set out all of the process requirements that must be met and time limits in order for Medicaid individuals' appeals of adverse actions to be appropriately adjudicated.

ISSUES

In response to certain parts of the Affordable Care Act, the Centers for Medicare and Medicaid Services promulgated final regulations affecting fair hearings and appeals, among other issues. The federal changes: (i) provide individuals with a choice to receive notices and information in electronic format or by regular mail and permitting changes in that choice; (ii) established that 5 days is the mailing time limit, instead of 3 days, in which the Medicaid individual is considered to have received notice; (iii) established that hearing officers shall be afforded access to agency records that are required to appropriately adjudicate the appeal. (see *Federal Register* 07/15/2013)

In compliance with federal law, the DMAS Appeals Division is developing an electronic notice system. System development will proceed in phases. As the electronic notice system is developed, DMAS will promulgate additional regulatory changes.

RECOMMENDATIONS

DMAS' changes contained herein comply with these federal mandates. The other changes contained herein, such as changing the Division of Client Appeals to Appeals Division, are technical in nature and are effecting no procedure or policy changes.

Family impact

Assess the impact of this 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; nor 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.