




COMMONWEALTH of VIRGINIA  
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**TO:** **BRIAN MCCORMICK**  
Regulatory Supervisor  
Virginia Department of Medical Assistance Services

**FROM:** **MICHELLE A. L'HOMMEDIEU**   
Assistant Attorney General

**DATE:** **February 18, 2015**

**SUBJECT:** **Fast Track Regulations Regarding HIV Premium Assistance Program  
(4251/7062)**

I am in receipt of the attached regulations to make changes to the HIV Premium Assistance Program regarding income, countable liquid assets, and family premium payments. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services ("DMAS") has the legal authority to promulgate these regulations and if they comport with state and federal law.

Based on that review, it is my view that the Director, acting on behalf of the Board of Medical Assistance Services pursuant to Virginia Code §§ 32.1-324 and 325, has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

Under Virginia Code § 2.2-4012.1, if an objection to the use of the fast-track process is received within the 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, DMAS shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process set out in this article with the initial publication of the Fast-Track regulation serving as the Notice of Intended Regulatory Action.

Brian McCormick  
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These regulations will not amend the State Plan, thus approval by CMS is not required. If you have any questions or need additional information about these regulations, please contact me at 786-6005.

cc: Kim F. Piner, Esq.

Attachment

**Project 4165 - Fast-Track**

**DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

**HIV Premium Assistance Program**

**12VAC30-100-260. Eligibility requirements.**

An applicant will be determined to be eligible for the HIV Premium Assistance Program if the individual:

1. Is a Virginia resident at the time of application and is:
  - a. A citizen of the United States;
  - b. An alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law, including an alien who is lawfully present in the United States pursuant to 8 USC § 1101 et seq.; or
  - c. An alien lawfully admitted under authority of the Indochina Migration and Refugee Assistance Act of 1975, 22 USC § 2601 et seq.;
2. Is certified by a licensed physician to be HIV positive;
3. Is certified by a licensed physician to be unable to work or to have a substantial likelihood of being unable to work within three months of the date of the physician's certification due to the HIV infection;
4. Is eligible for continuation of group health insurance plan benefits through the employer and the provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, or for continuation of benefits under any type of health insurance plan unless DMAS has reason to believe it is not cost effective;

5. Has family applicant and spouse income no greater than 250% of the poverty level;
6. Has countable liquid assets no more than \$10,000 in value; and
7. Is not eligible for Medicaid.

**12VAC30-100-270. Determination of countable income and liquid assets.**

When determining eligibility for the HIV Premium Assistance Program, the countable income and assets of each applicant shall be determined as follows:

1. Income shall include total projected family applicant and spouse income for the year beginning with the month of application to the program, including but not limited to:

- a. Wages;
- b. Commissions and fees;
- c. Salaries and tips;
- d. Profit from self-employment;
- e. Dividends or interest income;
- f. Disability benefits;
- g. Unemployment;
- h. Pension or retirement.

2. Countable liquid assets shall include assets available as of the date of the application which are convertible to cash. The following liquid assets shall be counted when determining eligibility:

- a. Savings accounts;
- b. Checking accounts;
- c. Money market certificates;

- d. Certificates of deposit;
- e. Mutual funds; or
- f. Stocks and bonds.
- g. All other liquid assets as provided in COV § 6.2-1100.

**12VAC30-100-320. Notification.**

The program shall inform an applicant, enrollee or the individual's representative of the individual's legal rights and obligations and give written notice of the following:

1. The final determination on an application, which shall include the reason or reasons if an applicant is found ineligible;
2. The imminent expiration of program authority and funding;
3. A notice of action to deny, cancel, or suspend program benefits which shall:
  - a. Include a statement of the proposed action, the reason for the action, and the statutory or regulatory authority for the action;
  - b. Include notification of the right to appeal the action;
  - c. Be mailed at least 15 calendar days before the effective date of the action.

**12VAC30-100-340. Health insurance premium payments.**

A. Premium payments shall be made to the employer, the insurer, or the enrollee, according to procedures established by the program.

B. Applicants and enrollees shall provide information as may be necessary for the payment of health insurance premiums by the program, including but not limited to the name and address of the employer or health insurance company, the last day of employment, the type of policy, the amount of the premium, and the date by which the premium must be paid.

C. Payments under this program are limited to the cost of the health insurance premium currently in effect and shall not include copayments, deductibles, or any other costs incurred by the enrollees. Payments under this program shall include coverage of family members if the enrollee's policy is the sole source of health insurance.