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Fast-Track Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation(s)	12VAC30-100-260; 12 VAC 30-100-270; 12 VAC 30-100-320; 12 VAC 30-100-340
Regulation title(s)	HIV Premium Assistance Program
Action title	HIV Premium Assistance Program
Date this document prepared	2/18/2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Department of Medical Assistance Services (DMAS) administers the Human Immunodeficiency Virus (HIV) Premium Assistance Program under the authority of the *Code of Virginia* § 32.1-330.1. DMAS is proposing to amend regulations for the HIV Premium Assistance program in 3 areas:

1. Currently, DMAS counts family income to determine if an individual can qualify for this assistance (12 VAC 30-100-270). The change proposes that only the individual's and spouse's income will be considered when evaluating an individual for this assistance. Sometimes these individuals have to move into their adult employed children's homes

and DMAS does not recommend counting these children's incomes in determining their parent's eligibility.

2. Countable liquid assets is now limited to the list contained in 12 VAC 30-100-270 which may not be all-inclusive (12 VAC 30-100-320). DMAS recommends the addition of the *Code of Virginia* 6.2-1100 definition into this regulation so that all assets that an individual may acquire may be considered in determining eligibility for this assistance. This is meant to preclude individuals who have or acquire more assets from receiving this assistance in order to preserve the very limited appropriations for individuals who have the least amount of assets.
3. When 12 VAC 30-100-340 was initially drafted, DMAS did not address coverage of family members in cases in which the participant's policy was the sole source of health insurance. This coverage will be permitted through these amendments.

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 Regulatory Review Summary with the attached amended action concerning HIV Premium Assistance Program (12 VAC 30-100-260, 12 VAC 30-100-270, 12 VAC 30-100-320, and 12 VAC 30-100-340) 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 and 2.2-4012.1, of the Administrative Process Act.

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.

DMAS provides financial assistance to individuals, who have been diagnosed as HIV-positive, to purchase group health insurance plan benefits through their employers. This assistance is permitted under the authority of § 32.1-330.1 of the *Code of Virginia* and the HIV Health Care Services Program (42 U.S.C. § 300ff-21 *et seq.*).

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this regulatory change is to amend the current HIV Premium Assistance program regulations in three ways: (i) to refer to individual/spousal income, rather than family, when evaluating individuals for this program's eligibility; (ii) to expand the list of countable liquid assets that DMAS may evaluate during eligibility determination; and, (iii) include provision in these regulations for coverage of family members if the participants' health insurance is the sole source of health insurance for the family.

DMAS believes that the proposed amendment of current regulations contributes to preserving the health, safety, and welfare of the citizens of the Commonwealth.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

The fast track process is being utilized to promulgate this change in regulatory language as it is expected to be non-controversial. Removing this non-employment requirement enables persons who are still able to work to remain in the workforce. This benefits the general economy and well as these individuals' families.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

The sections of the Virginia Administrative Code that are affected by these actions are the HIV Premium Assistance Program (12VAC30-100-260, 12 VAC 30-100-270, 12 VAC 30-100-320, and 12 VAC 30-100-340).

12 VAC 30-100-260

Currently, Medicaid regulations require that HIV Premium Assistance Program participants' family income not exceed 250% of the federal poverty level. This program provides assistance to qualifying individuals to purchase private health insurance which covers their medical care for their HIV diagnoses.

ISSUES

In some instances, program participants have been required to move into residences with their adult children. This current regulatory wording requires DMAS to consider the income of these employed adult children in determining if the parent can receive premium assistance. DMAS believes it is not appropriate to consider the income of adult children in determining eligibility for this program.

RECOMMENDATIONS

It is more cost effective for DMAS to provide premium assistance for these individuals as compared to having these individuals become eligible for the full range of Medicaid-covered services. DMAS recommends the modification of the family income to include only that of the program participant and the spouse.

12 VAC 30-100-270

Currently, this Medicaid regulation contains a specific finite list of liquid assets that DMAS considers when evaluating an individual's eligibility for the HIV Premium Assistance Program.

ISSUES

If a participant's financial circumstances change, during his period of program eligibility, DMAS needs to be able to consider all available liquid assets in determining eligibility. The appropriated funds for this program are very limited and individuals who have sufficient assets to afford their care should not be permitted to access these limited funds. Permitting DMAS to consider liquid assets beyond the finite list will help ensure that funds are allocated appropriately.

RECOMMENDATION

Add reference from the *Code of Virginia* section (§ 6.2-1100) that lists a broad list of liquid assets.

12 VAC 30-100-340

Currently, this Medicaid regulation contains all the requirements of Virginia Code § 32.1-330.1 except for the requirement at #4. "Coverage of family members, if the HIV-infected person's policy is the sole source of health insurance."

ISSUES

Since family coverage is already unofficially permitted in DMAS policy, this change will create no practical difference in this program. The amendment will provide additional support for existing DMAS policy.

RECOMMENDATION

Add reference to item 4 from COV § 32.1-330.1 because it is part of the statute.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

These changes will not have any disadvantages to the Commonwealth, public, or government officials. The advantage of changing the 'family income' to the 'participant and spouse income' is to prevent potential applicants from being disqualified from the program due to the income earned by their adult children. The advantage of broadening the list of liquid assets that DMAS can consider in determining and re-determining eligibility is to ensure that benefits are provided to appropriate individuals. There is no advantage to adding reference to coverage of family members as this merely codifies current policy.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There will be no localities that are more affected than others as these requirements will apply statewide.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

This regulatory action is not expected to affect small businesses as it does not impose compliance or reporting requirements, nor deadlines for reporting, nor does it establish performance standards to replace design or operational standards.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board	HIV participants.
Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.	8 HIV Participants.
Benefits expected as a result of this regulatory proposal.	
Projected cost to the state to implement and enforce this regulatory proposal.	\$0; this program is already operational and adequately staffed.
Projected cost to localities to implement and enforce this regulatory proposal.	\$0.
All projected costs of this regulatory proposal for affected individuals, businesses, or other entities. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance	\$0.

by small businesses, and costs related to real estate development.	
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Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

DMAS determined after reviewing HIV Program regulations, that there were no alternatives that would provide coverage for these individuals in a more cost effective way.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day 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, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Family Impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) 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; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children. The changes do not encourage or discourage economic self-sufficiency, self-pride, or the responsibility for one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment, and does not increase or decrease disposable family income.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency

regulation, please list separately: (1) all differences between the pre-emergency regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
12VAC30-100-260	N/A	Family income cannot exceed 250% of the Federal Poverty Level for an individual to be found eligible for the HIV Premium Assistance Program.	Amend the existing regulation to consider the participant's and spouse's income in determining the eligibility level.
12VAC30-100-270		<p>Family income must be considered in determining an applicant's eligibility for this program.</p> <p>Section lists a finite set of liquid assets that can be considered during eligibility determination.</p>	<p>Amend the existing regulation to consider only the applicant's and spouse's income(s), rather than the family's, so that adult children's incomes will not be counted.</p> <p>Expand the finite list of liquid assets that can be considered.</p>
12VAC30-100-340		Section does not refer to coverage of family members.	Add reference to coverage of family members consistent with the COV.

The change to 12 VAC 30-100-320 is an editorial/technical change and does not affect this program.