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Exempt Action Final Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-50-160; 12 VAC30-60-70; 12 VAC 30-60-130
Regulation title(s)	Home Health Services; Hospices Services
Action title	Revision for CMS Conditions of Participation
Final agency action date	March 29, 2017
Date this document prepared	March 29, 2017

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) or an agency's basic statute, the agency is not required, however, 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 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

This regulatory action updates a citation to an amended federal regulation related to Conditions of Participation (COPs) for Home Health Agencies (HHAs).

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: Home Health Services (12VAC30-50-160); Utilization Control: Home Health Services (12VAC30-60-70); and Hospice Services (12VAC30-60-130), 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.

/March 29, 2017/

/Signature/

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 amended regulatory text is necessary as a result of changes to Code of Federal Regulations at 42 CFR 484.36. The changes, promulgated by CMS, are authorized under sections 1861 and 1891 of the federal Social Security Act. The final rule effective date is July 13, 2017.

The *Code of Virginia*, § 2.2-4006.A.4.c, permits agencies to pursue final exempt actions for regulatory changes that are "[n]ecessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation..." and § 2.2-4006.A.3 permits final exempt actions for "changes in style or form."

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.

On January 13, 2017, U.S. Centers for Medicare and Medicaid Services (CMS) issued final regulations to amend the COPs for HHAs. Among the changes, the final rule recodifies 42 CFR 484.36 in the newly created 42 CFR 484.80 (82 FR 4504, see table at page 4514). The final rule effective date is July 13, 2017. In order to comply with the federal final rule, Virginia regulations need to be amended to update the CFR citation that is referenced for home health aide and hospice requirements.

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