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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 30-110-10 through 12 VAC 30-110-370
Regulation title(s)	Definitions; Appeals Division; Time Limitation for Appeals; Expedited Appeals; Designation of Representative; Notice of Adverse Agency Action; Advance Notice; Right to Appeal; Maintaining Services; Appeals Division Records; Request for Appeal; Filing Date; Time Limit for Filing; Extension of Time for Filing; Provision of Information; Review; Medical Assessment; Prehearing Action; Evidentiary Hearings; Location; Client Access to Records; Appeals Division Access to Agency Records; Subpoenas; Record of Hearing; Oath or Affirmation; Dismissal of Request for Appeal; Final Decision and Transmission of the Hearing Record
Action title	Client Appeals Amendments to Comply with Federal Regulatory Changes
Final agency action date	May 11, 2017
Date this document prepared	May 11, 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 will update DMAS regulations on client appeals to reflect a federal regulatory change that was published in the Federal Register under the title "Medicaid and Children’s Health Insurance Programs: Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Other Provisions Related to Eligibility and Enrollment for Medicaid and CHIP." (81 FR 86382, November 30, 2016.)

There are also corrections in form so that citations to the Code of Federal Regulations are properly referenced.

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 entitled "Client Appeals Amendments to Comply with Federal Regulatory Changes" (12 VAC 30-110-10 through 12 VAC 30-110-370) 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.

May 11, 2017
Date

/signature/
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 *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.

The chart below details the changes being made and the federal regulatory provision that requires the change. For purposes of this chart, the regulation entitled "Medicaid and Children’s Health Insurance Programs: Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Other Provisions Related to Eligibility and Enrollment for Medicaid and CHIP" will be called "Fair Hearing and Appeal Processes.”

VAC citation and change	Federal regulatory citation requiring the change
30-110-10, Changes to definition of "action"	Required by revisions to 42 CFR 431.201, "Fair Hearing and Appeal Processes"
30-110-10, New definition of "joint fair hearing"	Required by revisions to 42 CFR 431.201, "Fair Hearing and Appeal Processes"
30-110-10, Changes to definition of "send"	Change in form. 42 CFR § 431.201 includes a reference to 42 CFR § 435.918, so the citation to the latter has been added.
30-110-20, Changes to Appeals System paragraph A	Required by revisions to 42 CFR 431.205(f), "Fair Hearing and Appeal Processes"
30-110-20, Changes to Appeals System paragraph B	Required by revisions to 42 CFR 431.205(e), "Fair Hearing and Appeal Processes"
30-110-30, Changes to time limitations for appeal	Required by revisions to 42 CFR 431.244(f)(4), "Fair Hearing and Appeal Processes"
30-110-35, New section on expedited appeals	Required by revisions to 42 CFR 431.224, "Fair Hearing and Appeal Processes"
30-110-70, Changes in paragraphs 1 and 2 and addition of paragraph 5	Required by revisions to 42 CFR 431.206(b) and 42 CFR 431.210, "Fair Hearing and Appeal Processes"
30-110-80, Addition of federal citations.	Change in form. Citations added for clarification purposes.
30-110-130, New text on how appeals may be filed	Required by revisions to 42 CFR 431.221, "Fair Hearing and Appeal Processes"
30-110-170, Change from "decision" to "action or adverse determination"	Required by revisions to 42 CFR 431.201, "Fair Hearing and Appeal Processes"
30-110-350, New text on dismissals of appeals	Required by revisions to 42 CFR 431.223, "Fair Hearing and Appeal Processes"
30-110-370, Add section symbol (§)	Change in style

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.