



Virginia Department of Planning and Budget **Economic Impact Analysis**

12 VAC 30-110 Eligibility and Appeals
Department of Medical Assistance Services
Town Hall Action/Stage: 5767 / 9909
May 7, 2024

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB’s best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

Pursuant to Item 317 GG of the 2021 Special Session I Acts of the General Assembly,² the Director of the Department of Medical Assistance Services (DMAS), on behalf of the Board of Medical Assistance Services, proposes to clarify the client appeal rules for Medicaid members.

Background

This regulation governs the client appeals for Medicaid members when an adverse action regarding eligibility or covered services has been taken against them by DMAS or its contractor (e.g., managed care organizations (MCO),³ local department of social services, or state agencies such as the Department of Behavioral Health and Developmental Services, the Department of Social Services, etc.).

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² <https://budget.lis.virginia.gov/item/2021/2/HB1800/Chapter/1/317/>

³ If an action involved a member enrolled in an MCO, the individual must appeal through the MCO first. Therefore, MCO’s handle their own internal appeal process.

According to DMAS, prior to the Fall of 2020, the scope of client appeals was limited to whether the action taken was correct based on the information the agency/contractor had when it initially took the action. However, a legal aid organization in Virginia asserted that the lack of *de novo* hearings violated federal requirements. In a *de novo* hearing, the hearing officer considers all relevant evidence submitted during the appeal in order to make a determination on the issues on appeal, even if the evidence was not previously received by the agency/contractor. After consultations with the Office of the Attorney General, DMAS began processing client appeals as *de novo* hearings in October 2020 to align its appeal process with federal regulations. Also, at the request of the agency, Item 317 GG of the 2021 Appropriation Act was included in the budget that stated:

1. Out of amounts appropriated in the items for this agency, \$34,135 the first year and \$598,763 the second year from the general fund and \$34,135 the first year and \$823,476 the second year from nongeneral funds are provided to align the agency client appeals with federal requirements. Administrative funding (49901) shall be used to create seven new appeals staff positions that will respond to additional appeals and ensure regulatory compliance. The remaining support (appropriated in program 456) shall be used to fund necessary managed care contract changes needed to accommodate workflow adjustments.

2. The Department of Medical Assistance Services shall amend regulations to clarify (i) the burden of proof in client appeals; (ii) the scope of review for de novo hearings in client appeals, and (iii) the timeframes for submission of documents and decision deadlines for de novo client hearings. The department shall have the authority to promulgate emergency regulations to implement these amendments within 280 days or less from the enactment of this Act.

To implement this legislative mandate, an emergency regulation was promulgated effective September 8, 2022.⁴ This regulatory action would permanently replace the emergency regulation.

⁴ <https://townhall.virginia.gov/l/ViewStage.cfm?stageid=9321>

Estimated Benefits and Costs

The proposed action would make permanent an emergency regulation that clarified (i) the burden of proof in client appeals; (ii) the scope of review for *de novo* hearings in client appeals, and (iii) the timeframes for submission of documents and decision deadlines for *de novo* client hearings as required by the budget language.

The main impact of the legislation was clarification of the client appeal rules for Medicaid members to be consistent with federal rules and to avoid a potential lawsuit by a legal aid organization. The implementation of the changes required \$1.4 million in total funding annually (i.e., \$598,763 from state and \$823,476 from federal sources). These funds are used by DMAS to pay for seven additional appeals staff and other non-personnel costs. More specifically, the funds address appeal-related customer service inquiries, the processing of appeals, the review of documents submitted with each appeal, producing an appeal summary, costs associated with testifying at the hearing, and producing a transcript of the hearing recording if a case is appealed to the court system. On the other hand, the changes would have likely also benefited the clients who wanted to pursue an appeal and were willing to incur additional litigation costs to reverse an adverse action. However, these impacts result from the legislative mandate itself and not from this regulatory action. Additionally, *de novo* hearings have been conducted since October 2020. Thus, no new economic impact is expected when these changes become permanent. In this sense, the impact of the proposal is to permanently clarify in the regulation the *de novo* appeal process as mandated and envisioned by the legislation, and as already implemented by the emergency regulation on a temporary basis.

Businesses and Other Entities Affected

Medicaid members who file a client appeal may be affected by these changes. According to DMAS, in calendar years 2021, 2022, and 2023, there were 4,087, 4,483, and 8,606 client appeals, respectively. The increase in 2023 was due to the end of the federal Medicaid continuous coverage requirements. Additionally, relatively few (i.e., historically less than 20 per year) client cases are appealed to the court system. No Medicaid members appear to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁵ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁶ As noted above, the primary impact of this regulatory action is to permanently incorporate in the regulation clarifications made to the Medicaid client appeal process as mandated by the legislation. Thus, no adverse impact is indicated.

Small Businesses⁷ Affected:⁸

The proposed amendments do not adversely affect small businesses.

Localities⁹ Affected¹⁰

The proposed action does not introduce costs or other effects on localities.

Projected Impact on Employment

The budget language provided an additional seven staff positions at DMAS and may have led to some Medicaid members hiring legal help to take advantage of *de novo* hearings. However, the proposed regulation itself does not affect total employment.

⁵ Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance.

⁶ Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

⁷ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

⁸ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁹ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁰ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Effects on the Use and Value of Private Property

No impact on the use and value of private property nor on real estate development costs is expected from this regulatory action to replace an emergency regulation permanently.