



Exempt Action Final Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12VAC30-50-165, 12VAC30-60-75, 12VAC30-120-195
Regulation title	Amount, Duration, and Scope of Medical and Remedial Services; Standards Established and Methods Used to Assure High Quality Care; Waiver Services
Action title	Nurse Practitioners Authorization of DME
Final agency action date	
Document preparation date	

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), the agency 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, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The sections of the State Plan for Medical Assistance that are affected by this action are the Amount, Duration, and Scope of Medical and Remedial Services (12 VAC 30-50-165); Standards Established and Methods Used to Assure High Quality Care (12 VAC 30-60-75). The state regulation that is affected by this action is Waiver Services (12 VAC 30-120-195).

Durable medical equipment (DME) and supplies, because it is linked in 42 CFR § 440.70 to home health services, is a federally mandated service. It is required to be provided to Medicaid recipients. Currently, DMAS permits, in its DME regulations, only physicians to sign Certificates of Medical Necessity (CMN) (DMAS form 352). These documents are required in order for Medicaid payment for durable medical equipment, medical supplies, and enteral nutrition products.

Since DMAS adopted these regulations in 2002, the licensing standards for nurse practitioners have been modified (by the Board of Nursing) to permit these professionals to order medical services, such as drugs and medical equipment. DMAS is updating its regulations to permit these professionals to sign DMAS' Certificates of Medical Necessity and other related supporting documentation and thereby obtains DMAS' reimbursement for the services that are ordered on it. This change conforms DMAS' regulations to nurse practitioners' licensing standards.

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 2004 *Acts of Assembly* Chapter 855 also amended the *Code of Virginia* § 32.1-325(A)(14) to permit nurse practitioners to sign Certificates of Medical Necessity and any supporting documentation as follows:

“14. A requirement that certificates of medical necessity for durable medical equipment and any supporting verifiable documentation shall be signed, dated, and returned by the physician *or nurse practitioner* and in the durable medical equipment provider's possession within 60 days from the time the ordered durable medical equipment and supplies are first furnished by the durable medical equipment provider;”

In light of this specific mandate, the agency has no discretion in this regulatory action. Therefore, this change is exempt from public comment under the authority of the *COV* § 2.2-4006(A)(4)(a).

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 document with the attached amended State Plan pages and state regulations entitled **Nurse Practitioners Authorization of DME** (12VAC30-50-165, 12VAC30-60-75, 12VAC30-120-195) 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, of the Administrative Process Act.

Date

Patrick W. Finnerty, Director
Dept. of Medical Assistance Services

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or 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.