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Final Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-40-290 and 12 VAC 30-40-370
Regulation title(s)	More Liberal Income Disregards; More Liberal Methods of Treating Resources Under 1902(r)(2); Variations From the Basic Personal Needs Allowance
Action title	Disregard Sterilization Compensation Payments as Income and Resources
Date this document prepared	

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 of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 promulgates regulations to disregard payments, for the purpose of Medicaid eligibility determinations, made to compensate individuals who were involuntarily sterilized pursuant to the Virginia Eugenic Sterilization Act and who are living as of February 1, 2015.

The General Assembly directed the Department of Medical Assistance Services to seek authority from the Centers for Medicare and Medicaid Services to disregard these payments in determinations of Medicaid eligibility. In response to this mandate, DMAS promulgated emergency regulations, which went into effect on November 23, 2015. In this document, and

with the related regulatory text, DMAS is seeking to implement regulations that will make these changes on a permanent basis.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

DBHDS = Department of Behavioral Health and Developmental Services
DMAS = Department of Medical Assistance Services

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 regulations entitled "Disregard Sterilization Compensation Payments as Income and Resources" 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

Cynthia B. Jones, Director
Dept. of Medical Assistance Services

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency'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 *2015 Acts of the Assembly*, Chapter 665, Item 307 T directed DMAS to modify its eligibility regulations to exempt sterilization compensation (to be awarded to individuals who had been involuntarily sterilized under previous state policy) from consideration during the Medicaid eligibility determination process.

The *2016 Acts of the Assembly*, Chapter 780, Item 313.Q continued funding for the sterilization compensation program.

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 action is to allow individuals, who are compensated for their involuntary sterilization, to accept their monetary compensation without losing their eligibility for Medicaid.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

The section of the State Plan for Medical Assistance that is affected by this action is the Eligibility Conditions and Requirements, More Liberal Income Disregards (12 VAC 30-40-290) and creates the new section Variations from the Personal Needs Allowance (12 VAC 30-40-370).

CURRENT POLICY

Unless otherwise exempted by state or federal requirements, all income an individual receives must be counted in the Medicaid eligibility determination. Similarly, all money an individual has at the beginning of a month either in his hand or in a financial institution account must be considered a resource in the Medicaid eligibility determination. Money an individual has cannot be counted as both income and a resource in the same month, so payments received by individuals would be counted as income the month received and, if retained, a resource in following months.

ISSUES

Current policy would require payments (awards, settlements) made to individuals involuntarily sterilized as a result of the Virginia Eugenical Sterilization Act to be counted as income in the month of receipt of the payment and, if retained, a resource in following months. Counting this

payment as both income in the month of receipt and a resource thereafter could result in individuals losing Medicaid eligibility.

RECOMMENDATIONS

The General Assembly directed DMAS to seek federal authority to disregard compensation payments received by individuals who were involuntarily sterilized pursuant to the Virginia Eugenical Sterilization Act and who are living as of February 1, 2015. Receipt of federal authority to disregard these payments in the Medicaid eligibility determination will mean that these payments will have no impact on eligibility for new or current enrollees who receive this payment.

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.

There are no advantages or disadvantages to the public of this action. The advantage to the individuals who were subjected to involuntary sterilization is that they will be compensated, to some degree, for their pain and suffering. In receiving this General Assembly-authorized compensation, they will not lose their Medicaid eligibility. There are no disadvantages to the Commonwealth.

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.

No parts of this proposal are more restrictive than 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.

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.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

No changes have been made since the proposed stage.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

No public comments were submitted.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale

<p>12 VAC 30-40- 290</p>		<p>Sets out more liberal policies for disregarding various sources of income for various eligibility groups.</p>	<p>This action adds the disregard of all amounts received by all aged, blind, or disabled individuals as payment for involuntary sterilization under the Virginia Eugenical Sterilization Act.</p>
	<p>12 VAC 30-40-370</p>	<p>Sets out allowed variations from the standard Personal Needs Allowance.</p>	<p>This action expands the allowance in the Personal Needs Allowance for payments to individuals who were involuntarily sterilized under the Virginia Eugenical Sterilization Act.</p>