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## Final Regulation Agency Background Document

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation(s)</b>	12 VAC 30-20-570
<b>Regulation title(s)</b>	Reconsideration of Final Agency Decision
<b>Action title</b>	Reconsideration of Final Agency Decision
<b>Date this document prepared</b>	8/30/2017

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 final stage regulatory action follows an emergency regulation that was authorized by action of the 2016 Virginia General Assembly in enacting *Code of Virginia* §2.2-4023.1. That Code section provides for establishment of a reconsideration process by which appellants can petition the agency director to reconsider the agency's Final Agency Decision made pursuant to the *Code of Virginia* §2.2-4020. The statute specifically authorized the agency to promulgate regulations to specify the scope of the reconsideration review, and this regulation specifies the scope of review.

### 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.*

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 “Reconsideration of Final Agency Decision” 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.

August 30, 2017  
Date

/Signature/  
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.

In addition, the 2016 *Virginia Acts of Assembly* Chapter 694 created a new section of the Virginia Administrative Process Act which provides for a process by which appellants may petition an agency to reconsider its final case decision, and specifically authorized the agency to promulgate emergency regulations that specify the scope of that reconsideration review.

**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 2016 Virginia Acts of Assembly Chapter 694 created a new section of the Virginia Administrative Process Act, *Code of Virginia* §2.2-4023.1, which provides for a process by which appellants may petition an agency to reconsider its final case decision made pursuant to Va. Code §2.2-4020. The Chapter further specifically authorizes the agency to promulgate regulations that specify the scope of that reconsideration review. DMAS promulgated an emergency regulation, and this final stage regulation seeks to make those changes permanent. The regulation creates 12 VAC 30-20-570, which is needed to accomplish the goal of establishing and defining the scope of review for reconsiderations conducted in accordance with *Code of Virginia* §2.2-4023.1.

**Substance**

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

Prior to the newly enacted *Code of Virginia* §2.2-4023.1 by the Virginia Acts of Assembly – 2016 Session, Chapter 694, there was no process by which an appellant could petition the agency director to reconsider a final agency case decision made pursuant to *Code of Virginia* §2.2-4020.

Virginia Acts of Assembly – 2016 Session, Chapter 694, in enacting *Code of Virginia* §2.2-4023.1, provided a procedural timeline for the reconsideration process, but authorized the agency to enact emergency regulations to define the scope of the reconsideration review.

Both the emergency regulation and the current final stage regulation specify the scope of the reconsideration review, as authorized by the 2016 General Assembly in enacting *Code of Virginia* §2.2-4023.1. The scope of review shall be upon the record of the case decision made pursuant to *Code of Virginia* §2.2-4020. The reconsideration shall not authorize the reopening of the formal administrative hearing or acceptance of evidence or testimony not part of the record of the case, consistent with *1st Stop Health Services v. DMAS 63 Va. App. 266, 756 S.E.2d 183 (2014)*.

**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.*

The primary advantage of this regulation is that it will permit DMAS to comply with a legislative mandate. This regulation does not create any disadvantages to the public, the agency, or 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.*

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There are no requirements in this regulation that are more restrictive than applicable 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.*

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No localities will be particularly affected, as this regulation 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.*

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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 and does not increase or decrease disposable family income.

### 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.*

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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 comments were received.

**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

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
12 VAC 30-20-570	Specifies that the scope of the review shall be upon the record of the agency case decision made pursuant to <i>Code of Virginia</i> §2.2-4020.	This section follows 12 VAC 20-30-560 which specifies the agency’s process and timeline for formal administrative appeals pursuant to <i>Code of Virginia</i> §2.2-4020.	<p>The intent in paragraph A is to adopt the process and timeline for agency reconsideration of final case decisions made pursuant to <i>Code of Virginia</i> §2.2-4020, as mandated in the recently enacted <i>Code of Virginia</i> §2.2-4023.1.</p> <p>The intent of paragraph B is to specify the scope of the reconsideration review, as authorized by <i>Code of Virginia</i> §2.2-4023.1</p> <p>The impact is likely to allow for a timely review and decision by the director after careful consideration of the appellant’s petition and the record of the case.</p>