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Fast Track Proposed Regulation Agency Background Document

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| Agency name | DEPT. OF MEDICAL ASSISTANCE SERVICES |
| Virginia Administrative Code (VAC) citation | 12VAC30-40 |
| Regulation title | More liberal methods of treating income and resources |
| Action title | Discontinue Resource Test and Counting of Earned Income for Family and Children Groups |
| Document preparation date | 2/26/2004; Director approved: |

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

Due to Medicaid's statutory link to the Aid to the Families with Dependent Children (AFDC) program that was in effect as of July 16, 1996, current eligibility determination policies require that Medicaid count the value of resources and the fair-market value of in-kind support and maintenance in determining financial eligibility. Additionally, states are required to count the earned income of children under the age of 19 who are students. However, section 1902(r)(2) of the Social Security Act permits states to have more liberal policies than those of the old AFDC program for resources and income allowances. Under the more liberal policies permitted by section 1902(r)(2), states may modify their Medicaid eligibility process to make more liberal the review of certain resource and income elements in determining financial eligibility.

This suggested change streamlines the Medicaid eligibility determination process allowed under section 1902(r)(2) by: (i) eliminating the resource test for Low-Income Families with Children and for Individuals Under Age 21 for whom a public agency is assuming full or partial financial responsibility; (ii) eliminating the counting of all earned income of a child younger than age nineteen who is a student, and (iii) eliminating the counting of all in-kind support and maintenance received by members of the Family and Children's covered groups.

Eliminating the resource test, discontinuing the counting of income earned by a student child under age 19 and removing the requirement for counting the value of all in-kind support and maintenance will simplify the eligibility determination process for local departments of social services and conform resource policies for all groups covered under the Family and Children's categories with those of the Title XXI program, Family Access to Medical Insurance Security Plan (FAMIS). These policy alignments will reduce administrative burdens inherent in the determination of Medicaid eligibility. Eligibility determination errors by the staffs of local social services agencies will be reduced.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

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 Office of the Attorney General has certified that this agency has the authority to promulgate this action pursuant to the COV § 2.2-4012.1

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail 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 simplify the administrative requirements of the Medicaid eligibility determination process for the Family and Children's covered groups, eliminate financial barriers for applicants and recipients and reduce costs associated with Medicaid eligibility determinations. This action proposes to eliminate the counting of resources, the

counting of earned income for certain children, and the counting of in-kind support and maintenance for low-income families and children.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

This regulatory action will implement more liberal eligibility requirements in order to: (i) streamline the Medicaid eligibility determination process and facilitate the enrollment of children and their parents/caretakers; (ii) align the resource requirements with other programs administered by the Department of Social Services; and (iii) allow for the development of a simplified Family and Children's application. Since this action eases the current eligibility policies, objections by client advocate groups are not anticipated. In the absence of the fast-track process, implementation of these more liberal requirements will be unnecessarily delayed and would likely result in denying the affected low-income children and their families access to needed healthcare coverage.

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.)

The section of the State Plan for Medical Assistance affected by this suggested amendment is More Liberal Methods of Treating Income and Resources (Attachment 2.6-A, Supplement 8a. and 8b. (12 VAC 30-40 sections 345, 280, and 290)).

Due to Medicaid's statutory link to the Aid to the Families with Dependent Children (AFDC) program that was in effect as of July 16, 1996, current policies require that Medicaid count the value of resources and the fair-market value of in-kind support and maintenance in determining financial eligibility. Additionally, states are required to count the earned income of children under the age of 19 who are students. However, section 1902(r)(2) of the Social Security Act permits states to have more liberal policies than those of the old AFDC program for resources and income allowances.

Elimination of the requirement to count the fair market value of in-kind support and maintenance.

In-kind support and maintenance is food, clothing, or shelter, or any combination thereof, which may be provided to individuals. Currently, the fair market value of in-kind support and maintenance is counted as income when evaluating eligibility in the Low-Income Family and Children's covered groups. This regulatory action would eliminate the difficulty in and subjective nature of determining the fair market value of in-kind support and maintenance for the Low-Income Family and Children's covered groups. This proposed change simplifies and permits a more streamlined assessment of the financial eligibility criteria for such groups.

Elimination of the resource test. Resources are assets an individual owns, has the right, power or authority to convert to cash, and is not legally restricted from using for his support and maintenance; such as, checking accounts, savings accounts or retirement accounts. Currently, children's coverage under the Medicaid poverty level groups does not have a resource test; however, coverage under the Low-Income Families with Children group does require a resource test. Therefore, while children may be eligible for coverage, their parents, whose income was used to determine the children's eligibility, may not be eligible. Elimination of the resource test will allow for application of a single set of rules in determining eligibility for low-income parents and their children.

Elimination of the requirement to count the earned income of a student-child younger than nineteen years of age. Currently, evaluating whether or not to count the earned income of a child who is a student, and how much of that income is to be counted, is a time-consuming and burdensome process that has little impact on the child's Medicaid eligibility. Elimination of this requirement will assist in streamlining the eligibility determination process and will align the Medicaid income counting policies for children with those of the FAMIS program.

The result of these regulatory changes will be the simplification of, and increased accuracy in, assessing the financial eligibility of families and children applying for coverage under the State's Medicaid program. This will likely reduce administrative expenses for the local agencies. These changes will facilitate the enrollment of children and their parents/caretakers, and streamline the eligibility determination process by reducing eligibility determination processing time. In addition, these changes will align the resource requirements with other programs administered by the Department of Social Services, such as Temporary Assistance for Needy Families (TANF), and allow for the development of a simplified application form for all families and children.

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 these suggested regulatory changes is to make the Medicaid eligibility determinations more efficient, equitable, and objective. Reducing the administrative costs and burdens for local DSS eligibility workers also reduces taxpayer costs for Medicaid administration.

Streamlining and simplifying Medicaid eligibility policies will relieve applicants of the burdensome requirements of documenting, and local eligibility workers verifying, factors that have proven to have little, if any, impact on the eligibility determination outcome.

There are no disadvantages to the public in the implementation of these suggested changes, and the Department projects no negative issues in implementing these proposed changes.

Financial impact

Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information

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| Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures | For the first year, the estimated fiscal impact for DMAS to implement this regulation is \$153,000 total funds (\$76,500 GF). This amount is related to medical expenditures. Costs in subsequent years may be higher due to the cumulative effect of enrollees. Estimated savings for DSS associated with eliminating the resource test exceeds the cost to DMAS of providing medical coverage to the few applicants who exceed current resource limits. DSS costs for its eligibility determination activities are not available. |
| Projected cost of the regulation on localities | Cost savings for localities due to reduced eligibility determination processing time. |
| Description of the individuals, businesses or other entities likely to be affected by the regulation | Individuals who apply for Medicaid coverage under the Family and Children's covered groups. |
| Agency's best estimate of the number of such entities that will be affected | For the covered groups this regulation affects, there were 59 applications denied during the period July 2002 to June 2003 due to excess resources, in-kind support and maintenance or student income. |
| Projected cost of the regulation for affected individuals, businesses, or other entities | None |

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The elimination of some resources, *i.e.*, one vehicle, as opposed to the elimination of all resources was considered. However, elimination of only some resources would continue to

result in differing eligibility requirements across the different eligibility groups. Exemption of all resources assures the conformity of the Medicaid resource policy with other public assistance programs administered by local departments of social services. It also conforms the Title XIX (Medicaid) eligibility policy to the eligibility policy for the Title XXI (FAMIS) program.

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

This regulatory action will not have any negative effects on the institution of the family or family stability. It will not increase or decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, or the assumption of family responsibilities. This proposed action will more likely be supportive to the family institution as it adopts a single set of rules for determining Medicaid eligibility for children and their parents.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change and rationale |
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| 12VAC 30-40-280 | | <p>The earned income of a child under the age of nineteen who is a student is counted in determining eligibility.</p> <p>The value of in-kind support and maintenance is counted in determining financial eligibility.</p> | <p>The earned income of a child under the age of nineteen who is a student will be disregarded in the eligibility determination.</p> <p>The fair market value of in-kind support and maintenance will be disregarded in determining financial eligibility. In-kind support and maintenance is food, clothing, or shelter, or any combination thereof, which may be provided to individuals.</p> |
| 12 VAC 30-40-290 | | The resource limit is \$1,000 | The Commonwealth will disregard the value of resources for IV-E Foster Care and IV-E Adoption Assistance children described in 12VAC 30-30-20, . 5a., 5b., and 6, and Individuals under Age 21 described in 12VAC 30-30-10, 2e., for whom public agencies are assuming full or partial financial responsibility. |

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| <p>12 VAC 30-40- 345</p> | | <p>The family resource limit is \$1,000</p> <p>The agency counts the earned income of a child under the age of nineteen who is a student.</p> <p>The agency counts the fair market value of in-kind support and maintenance in determining financial eligibility.</p> | <p>The agency will not consider resources in determining eligibility for Low Income Families with Children (LIFC).</p> <p>The agency will disregard all earned income of a child under the age of nineteen who is a student.</p> <p>The agency will disregard the fair market value of in-kind support and maintenance in determining financial eligibility. In-kind support and maintenance is food, clothing, or shelter, or any combination thereof, which may be provided to individuals.</p> |
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