



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Dept. of Medical Assistance Services
VAC Chapter Number:	12 VAC 30-110
Regulation Title:	Eligibility and Appeals
Action Title:	Authorized Applicant
Date:	

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulatory action establishes which individuals and the circumstances in which those individuals who have been appointed by a Medicaid applicant as an authorized representative may sign applications and otherwise conduct business with Medicaid in the applicant's name. This action is necessary due to repeated instances identified by DMAS of individuals attempting to sign for and actually signing for Medicaid applicants without the applicants' knowledge or consent. These actions have resulted in illegal and inappropriate eligibility determinations and payment of expenses.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The *Code* also provides, in the Administrative Process Act (APA) §§ 2.2-4007 and 2.2-4009, for this agency's promulgation of proposed regulations subject to the Governor's review. Federal regulations at 42 CFR §§ 435.906 and 435.907 provide that an individual must be afforded an opportunity to apply for Medicaid. The agency must require a written application from the applicant, his authorized representative or, in the case of an incompetent or incapacitated individual, someone acting responsibly on his behalf.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

This regulation is essential to protect the health and welfare of citizens and for the efficient and economical performance of an important governmental function. This regulation is necessary to specify who is legally able to apply for Medicaid for himself or on behalf of another person and to prevent persons who are not legal representatives from making applications.

Medicaid is a multi-billion dollar program that expends public funds to purchase health care on behalf of eligible individuals. The Department must ensure that program funds are expended only on behalf of eligible individuals and protect the program from fraud and abuse. Eligibility determination is based upon personal and financial information submitted by individuals applying for Medicaid or by individuals applying on behalf of others. In addition, certain legal assignments of rights must be provided as a condition of eligibility.

The adult caretaker relative who is allowed to apply for Medicaid for a child is the same individual who may apply for FAMIS program benefits.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

This regulatory action proposes state regulations concerning which individuals are authorized to sign Medicaid applications. In the past, the Department has found itself faced with applications filed without the knowledge and approval of the applicant or filed on behalf of incompetent or incapacitated individuals by others who have no legal authority to conduct business on behalf of the applicant. To ensure that applications are only filed with the full knowledge and consent of an applicant or by someone legally acting on his behalf, the Department proposes this regulation.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

The primary advantage in promulgating these regulations is to legally establish who may sign applications and otherwise conduct Medicaid business in the applicant's name. The regulations serve to protect individuals who are unable to sign applications on their own behalf by specifying who is authorized to act on their behalf and prohibit individuals who have no legal authority from acting on behalf of another when applying for Medicaid. There are no disadvantages to the public, agency or the Commonwealth.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

These changes in Medicaid regulations are necessary in order to develop uniform verification procedures between Medicaid and FAMIS for children. These changes, as well as other operational changes to the two programs, are designed to increase access to the child health insurance programs for Virginia's children. This will result in increased expenditures in these programs, which is being factored into projections of future expenditures for both programs.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

12VAC 30-110-1350, Definitions, sets out definitions for the new terms used in this regulatory package that relate to who can file an application for Medicaid.

12VAC 30-110-1360, Right to apply, provides that an individual who is 18 years of age cannot be refused the right to apply for Medicaid or be discouraged from applying for assistance for himself.

12VAC 30-110-1370, Applicant's signature, provides that a Medicaid applicant must sign a State approved application form unless the application is filed and signed by specified individuals authorized to act on behalf of the individual. For applicants who cannot sign their name, a provision is made for the individual's mark to serve as his signature, provided that it is correctly designated and witnessed.

12VAC 30-110-1380, Authorized representative for individual age 18 or older, sets forth the provisions under which someone can act on behalf of an individual who is 18 years of age or older in filing a Medicaid application. Additionally, this section sets forth procedures to follow when an individual is unable sign an application for Medicaid and has no legal representative.

12VAC 30-110-1390, Authorized representative for children under 18 years of age, sets forth provisions under which someone can act on behalf of a child under the age of 18 in filing a Medicaid application. This sections provides that a parent, guardian or legal custodian, caretaker relative with whom the child lives who is related to the child by blood or marriage, or an authorized representative designated by one of the aforementioned individuals can complete a Medicaid application on behalf of a child applicant.

12VAC 30-110-1395, Authorized representative for a deceased applicant, sets forth the provisions under which a Medicaid application can be filed on behalf of a deceased individual and who is authorized to file such an application.

12VAC 30-110-1396, Persons prohibited from signing an application, provides that employees of or an entity hired by a medical service provider is prohibited from signing a Medicaid application on behalf of a deceased individual or an individual who cannot designate someone to act on his behalf.

Alternatives

Please describe the specific 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.

Local departments of social services receive and process thousands of applications for Medicaid each year. Each application represents an individual or family which is seeking payment of covered medical and health services received from an array of health and medical care providers such as hospitals, doctors, pharmacists, and nursing homes. In order to ensure that claims are paid only on behalf of eligible individuals, the information secured from applications upon which eligibility is determined must be accurate and complete. Therefore, each application must be signed by an individual privy to the necessary information and authorized to sign on his own or on behalf of another. This proposed regulation is the result of careful evaluation of the Department's experience over the past thirty years. In addition, the proposed regulation is being submitted for public comment so that additional issues and alternatives may be considered.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

These regulations specify who is legally able to make an application for Medicaid for himself, or on behalf of another person. No comments were received by the agency during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

DMAS has examined these regulations and, in so far as is possible, has ensured that they are clearly written and understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

DMAS and Medicaid advocates conduct periodic reviews of the impact of these regulations and confer about necessary changes.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

Many elderly and disabled Virginians and many children are unable to pay the high cost of medical and health care services without assistance. These regulations specify how local eligibility workers must evaluate applications for Medicaid. The goal of the regulations is to ensure that only individuals who desire to apply for assistance or persons acting legally on their behalf can sign an application. In developing these regulations, the Department has reviewed the impact that the regulations will have on families and their ability to remain self-sufficient and maintain personal responsibility. The regulations will encourage self-sufficiency and personal responsibility by ensuring that individuals act on their own behalf or authorize others to act responsibly for them. The regulations ensure that only individuals legally authorized to act on behalf of incompetent or incapacitated individuals may apply on their behalf.