

State Funding of Certain Abortions: In cases of rape, incest, or incapacitating physical deformity or mental deficiency

Keywords:

State funded abortion; Code of Virginia § 32.1-92.1; Code of Virginia §32.1-92.2; incapacitating physical deformity or mental deficiency

Application

This policy applies to all persons or organizations who may be seeking, approving, or processing state funds to pay for certain abortions where a pregnancy has resulted from rape or incest or where the fetus is believed to have an incapacitating physical deformity or mental deficiency. The Virginia Department of Health (VDH) accepts and processes these requests in accordance with the Code of Virginia §§ 32.1-92.1 and 32.1-92.2. This policy applies to all VDH staff involved with this process; persons seeking funding for certain abortions under this statute; physicians providing certifications related to this policy and statute; and providers of abortion services seeking reimbursement related to this policy and statute.

Purpose

The purpose of this policy is to provide additional guidance for Code of Virginia §§ 32.1-92.1 and 32.1-92.2 which authorize VDH to fund abortions using general fund appropriations for women who would otherwise be eligible for medical assistance under the State Medical Assistance Plan in cases of pregnancies resulting from rape or incest or in cases where the fetus is believed to have an incapacitating physical deformity or mental deficiency. The Hyde Amendment, first implemented in 1977, is a federal legislative provision which forbids the use of federal funds for abortions except in cases of life endangerment, rape or incest. This Amendment applies only to funds allocated by the annual federal appropriations bill for the U.S. Department of Health and Human Services and primarily affects Medicaid. In Virginia, the Department of Medical Assistance Services administers the Medicaid program which only covers abortions in cases where the pregnancy is life or health threatening to the mother. VDH is authorized to use state funding to fund limited additional categories as described in state law.

Policy

It is the policy of VDH to fund certain abortions for women who meet financial eligibility criteria of the State Medical Assistance Plan. These certain abortions are limited to those sought from pregnancies resulting from rape or incest or those where the fetus is believed to have a gross and totally incapacitating physical deformity or gross and totally incapacitating mental deficiency. To qualify for abortion funding in cases of rape or incest, the incident must have been reported to a law enforcement

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or public health agency. For the purposes of this policy, public health agency is a VDH local health district office. To qualify for abortion funding in cases of an incapacitating physical deformity or mental deficiency, a physician certification regarding the condition of the fetus must be made to VDH. This policy describes fundamental requirements and references to other applicable policies to assure that the application, decision, and reimbursement functions are carried out in a timely, confidential, sensitive, and responsible manner.

Key Components of the Policy

1. Basic Requirements

- The patient applicant must be a resident of the Commonwealth of Virginia
- The patient applicant must meet the financial eligibility criteria of the Virginia Department of Medical Assistance Services Plan

2. Evidence Required to Meet the Intent of the Law

- Completed Application Form (SFA-12)
- Cases of rape or incest must be reported to law enforcement or public health agency. Public health agency means a Virginia Department of Health local health district office.
- Cases of gross and totally incapacitating physical deformity or mental deficiency of the fetus must be certified as such by a physician who has performed medically appropriate tests to support the assessment. VDH requires copies of cited evidence including but not limited to ultrasound, amniocentesis, or blood work.
- Proof of financial eligibility: Copy of Medicaid or Medicaid HMO card or Medicaid card number for new cases or verification from a certified Medicaid eligibility specialist that the patient's income meets the Virginia Medicaid financial eligibility screening criteria.

3. Confidentiality

All VDH personnel involved with the processing of these applications shall follow the VDH Confidentiality Policy (OCOM #1.01) and Confidentiality Procedures. The entire policy and procedure documents can be accessed at <http://vdhweb/confidentialitypolicy/>. Key points from the Confidentiality Policy which are applicable to this policy include: limiting access to confidential information to only those personnel who have a legitimate work-related need to access the information; limiting disclosure of confidential information to only authorized persons; and ensuring that application and payment information is maintained in a secure manner which prevents unauthorized individuals from gaining access to such information.

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4. Records Management

All information gathered in the course of determining eligibility and processing payments in accordance with this policy shall be maintained in a confidential file to be treated as a health record. These records do contain protected health information. Records management and destruction shall be handled in accordance with applicable health record and privacy statutes including federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Code of Virginia § 32.1-127.1:03 (Virginia Health Records Privacy Act). In addition, the most recent and applicable version of the Library of Virginia “Records Retention and Disposition General Schedule No. 120 All State Agencies Health Records” shall be followed.

5. Timely Processing

All requests for funding will be reviewed in a timely manner. Following complete receipt of information needed to make a determination on eligibility for funding; a decision will be made and communicated to the certifying physician on behalf of the applicant within two full business days.

6. Additional Information

VDH reserves the right to make requests for additional information in order to determine eligibility for funding. Discussions between the diagnosing physician and the reviewing physicians at VDH may occur as needed to clarify or obtain information regarding the application.

7. Financial Eligibility

VDH staff must receive required information supporting the applicant’s financial eligibility. This information will be either a copy of the Medicaid card or provision of a Medicaid number for applicants who have not yet received a hard copy of their card. VDH may obtain financial eligibility information from Virginia Department of Social Services or Virginia Department of Medical Assistance Services as needed with the applicant’s written permission.

8. Reimbursement Requirements

Approval for funding must be received prior to performance of the abortion in order for reimbursement to be made. No retrospective requests shall be considered. Providers seeking reimbursement under this policy agree to accept the Virginia Medicaid allowed rate for procedures billed. Certifying physicians must hold a current license to practice medicine in the state of Virginia. The abortion facility must hold an appropriate current license in the state of Virginia as an abortion facility or general hospital.

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9. Determination

VDH makes the final determination for approval of applications and reserves the right to deny funding. One primary VDH physician shall review all applications and consider all required medical evidence provided and render a decision and rationale for the agency's decision based on current medical knowledge and available standards of practice.

In addition, a secondary VDH physician shall review all applications and consider all required medical evidence provided and render a decision and rationale for the agency's decision based on current medical knowledge and available standards of practice.

10. Appeals

An abortion provider seeking state funds to pay for an abortion who has been denied approval for VDH state funding may submit an appeal in writing within five business days to VDH. The appeal must be in writing and should be faxed to (804) 864-7771 and clearly state the grounds upon which the applicant believes that the request meets the criteria of Code of Virginia § 32.1-92.1 and 32.1-92.2. The Deputy for Population Health or his/her designee will render the final decision. The final decision will be communicated in writing and by phone to the applicant within two business days of receiving the appeal.

11. Prompt Pay

Reimbursement shall be made in accordance with the Virginia Public Procurement Act including prompt payment provisions.

12. Denied Payment

Payment may be denied if it is determined that there was a violation of applicable state and federal laws and regulations.

13. Responsibilities of VDH

VDH is responsible for receiving, reviewing, and making determinations on applications for funding in accordance with state law and this policy. VDH communicates decisions on applicants through the certifying physician.

In the event that a patient reports to a local health department that their pregnancy is the result of rape/incest and wants to apply for state funding for an abortion, the local health department is to refer the patient to a licensed abortion provider, inform the provider and/or patient that they will need to complete and submit the "Application for VDH Funded Termination Under Section § 32.1-92.1 and 32.1-92.2 of the Code of Virginia" (SFA-12), and document the encounter in the patient's medical record. Local health departments are expected to fulfill all state mandatory reporting requirements.

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14. Responsibilities of Patient Applicants, Certifying Physicians, and Providers of Abortion Services

Patient applicants and certifying physicians are responsible for providing truthful and complete application information including financial verification. Abortion providers/certifying physicians are responsible for submitting applications and required evidence on behalf of patient applicants. Abortion providers and facilities must follow all applicable state and federal laws and regulations. Abortion providers and certifying physicians are responsible for communicating VDH decisions on funding to patient applicants and providing a copy of the final application with determination to the patient applicant. Providers of abortion services are responsible for submitting timely invoices accompanied by the VDH application. Invoices for reimbursement will be accepted and reimbursed up to one year after the date of procedure.

15. Legal Mandated Reporter Responsibilities

Persons licensed to practice medicine or any of the healing arts are required to report suspected cases of child abuse and neglect, including sexual assault, for persons under age 18 to the Virginia Department of Social Services Child Protective Services Hotline or to the local Department of Social Services where the abuse occurred or where the child resides as required by Code of Virginia § 63.2-1509.

Authority

This policy is authorized under Code of Virginia § § 32.1-92.1 and 32.1-92.2.

§ 32.1-92.1. Funding of certain abortions where pregnancy results from rape or incest.

From the moneys appropriated to the Department from the general fund, the Board shall fund abortions for women who otherwise meet the financial eligibility criteria of the State Medical Assistance Plan in any case in which a pregnancy occurs as a result of rape or incest and which is reported to a law-enforcement or public health agency. (1982, c. 644.)

§ 32.1-92.2. Funding of certain abortions where fetus is believed to have incapacitating physical deformity or mental deficiency; physician's certificate.

From the moneys appropriated to the Department from the general fund, the Board shall fund abortions for women who otherwise meet the financial eligibility criteria of the State Medical Assistance Plan in any case in which a physician who is trained and qualified to perform such tests certifies in writing, after appropriate tests have been performed, that he believes the fetus will be born with a gross and totally incapacitating physical deformity or with a gross and totally incapacitating mental deficiency. (1982, c. 645.)

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Procedures for State Funded Abortion

- I. Ensuring proper application
 - A. An individual can only apply for state funding of certain abortions through the certifying physician or facility that will perform the abortion. The application must be complete and include all requested information regarding the date of the procedure and the facility where the procedure will take place.
 - B. The application must be submitted using the “Application for VDH Funded Termination Under Section § 32.1-92.1 and 32.1-92.2 of the Code of Virginia” (SFA-12).
 - i. The certifying physician/facility that will perform the abortion shall confirm financial eligibility prior to submitting the SFA-12.
 1. Those patient applicants who are currently enrolled in the State of Virginia Medicaid Program meet the financial criteria for state funding of certain abortions.
 2. If the patient applicant is not currently enrolled in the State of Virginia Medicaid Program, then the applicant must apply with the Virginia Department of Social Services (DSS) to determine Medicaid eligibility and obtain a Medicaid number.
 - C. The certifying physician/facility that will perform the abortion shall submit the SFA-12 to the Office of Family Health Services, Virginia Department of Health.
- II. Application review
 - A. The Reproductive Health Unit Supervisor or designee in the Division of Child and Family Health will review all applications for completeness.
 - i. Incomplete applications will not be forwarded for review and the originating facility will be notified.
 - ii. Complete applications will be placed in a confidential envelope and hand delivered to the Office of Family Health Services (OFHS) Office Director or designee.
 - B. The OFHS Office Director or designee shall serve as the primary physician reviewer for VDH and review all applications for meeting criteria for state funding of abortions.
 - i. The review of the application will be completed and status documented on the SFA-12.
 - ii. The OFHS Office Director or designee will document the rationale for approving or not approving the application.
 - iii. The OFHS Office Director or designee will sign and date the SFA-12 in the § s provided.

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- iv. The application form (SFA-12) and materials will be hand delivered to a second VDH physician reviewer who shall be the Medical Director of Community Health Services or designee.
 - v. The second VDH physician reviewer will also complete a review of the SFA-12; document status including rationale for approving or not approving the application; and sign and date in the § s provided.
 - vi. The application materials will be hand delivered to the OFHS Director or designee from the second VDH physician reviewer.
 - vii. In the event the primary and secondary physician reviewers do not agree on the determination, they will discuss the case in an effort to reach a consensus.
 - viii. If they are unable to reach consensus, the case will be reviewed by the Deputy Commissioner for Population Health, or his/her designee, who will make the final determination.
 - ix. The OFHS Director or designee will return the completed application to the Reproductive Health Unit Supervisor.
 - x. The OFHS Director or designee and second VDH physician reviewer will complete their review and determination within one business day. If additional information is needed by either VDH physician reviewer, then the review and determination will be completed within one business day following the receipt of the requested additional information.
- III. Communicating application disposition
- A. The Reproductive Health Unit Supervisor shall fax the application form (SFA-12) back to the originator (the certifying physician/facility that will perform the abortion). In addition, the Family Planning Supervisor will contact the originator directly to communicate the decision.
 - B. It is the responsibility of the originator to notify the patient applicant of the denial or approval of the application.
 - C. The reviewing physician will be available to discuss a case if the referring certifying physician desires.
 - D. It is the responsibility of the originator to provide a copy of the approved application to the applicant to be taken to the facility performing the abortion.
 - E. VDH will complete eligibility determination and notification by close of business the following business day.

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IV. Appeals

- A. In the event that VDH determines that the request for coverage does not meet the requirements of Code of Virginia §§ 32.1-92.1 and 32.1-92.2, the abortion facility or certifying provider may submit an appeal on behalf of, and upon the express request of, the applicant.
- B. Requests for appeal must be faxed to the Division of Child and Family Health, Office of Family Health Services, Virginia Department of Health at (804) 864-7771.
- C. The request must be in writing and specify the specific reason that the appellant believes that the request meets the criteria of Code of Virginia §§ 32.1-92.1 and 32.1-92.2. The appeal request should be signed by the abortion provider/certifying physician.
- D. The Reproductive Health Unit Supervisor will review the appeal request for completeness and verify that it has been filed within five business days from the date of notification of the original determination.
- E. Complete and valid appeals will be forwarded to the Deputy Commissioner for Population Health or his/her designee along with the original request, pertinent medical records, and the review of the primary and secondary VDH physician reviewers.
- F. The Deputy Commissioner for Population Health will make a determination as to whether or not the request meets the requirements of criteria of Code of Virginia §§ 32.1-92.1 and 32.1-92.2. The Deputy will document his/her decision and rationale in writing and return to the Reproductive Health Unit Supervisor within one business day. This determination is final.
- G. The Reproductive Health Unit Supervisor will notify the originator of the appeal of the determination in writing and by phone within two business days of the appeal.
- H. It is the responsibility of the originator of the appeal to communicate the determination to the patient applicant.

V. Record Retention

- A. Paper copies of the signed application, all medical information submitted with the application, and invoices will be stored in a locked cabinet for one year. Digital copies will be stored on a secure server for five years.
- B. Access to this cabinet will be limited to the Reproductive Health Unit Supervisor or designee .

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- C. This record will be considered a health record. All applicable federal and state laws regarding confidentiality and privacy will be followed.
 - D. These records will be kept in accordance with the latest and most applicable Library of Virginia "Records Retention and Disposition General Schedule No. 120 All State Agencies Health Records".
- VI. Payment Process
- A. To receive payment, the facility and physician performing the abortion must:
 - 1. Submit a CMS 1500 Health Insurance Claim Form to:

Reproductive Health Unit Supervisor
Division of Child and Family Health
Office of Family Health Services
Virginia Department of Health
P.O. Box 2448, 9th Floor
Richmond, VA 23218
 - B. Billing codes must reflect the procedures performed.
 - C. Payment shall be limited to the Medicaid allowable rate for the procedure.
 - D. Payment shall constitute full and final payment for such services.
 - E. The Department reserves the right to refuse payment if the following occur:
 - 1. The invoice is over one year from the date of the procedure, or
 - 2. The procedure occurred in a non-licensed facility, or
 - 3. The procedure was performed by a non-licensed provider.
- VII. Responsibilities of the Office of Family Health Services:
- A. The Reproductive Health Unit Supervisor will verify that services invoiced were for an approved applicant.
 - B. The Reproductive Health Unit Supervisor will sign, date, and enter a cost code for the invoices received.
 - C. The Reproductive Health Unit Supervisor will scan approved invoice onto a secure server to serve as part of the patient's medical record and store a paper copy of the invoice in a locked cabinet for one full year. Before submitting a copy of the invoice to the assigned processor in OFHS business unit, the Reproductive Health Unit Supervisor will redact all private health information.

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- D. The business office will process the payment according to state procedures.

Related Policies

- I. Confidentiality (OCOM #1.01)
- II. Providing Services to Minors-Ensuring Access to Care, Mandated Reporting Requirements, Disclosures and Confidentiality

Glossary

- **Certifying Physician** : Physician, who holds a current license to practice medicine in the state of Virginia, that has conducted a physical examination and appropriate tests of the applicant and based on this examination is able to certify the gestational age of the fetus and the presence of a gross and totally incapacitating physical deformity or mental deficiency.
- **Incest**: Incest as defined in the Code of Virginia § 18.2-366 means a person who commits adultery or fornication with any person whom he or she is forbidden by law to marry.
- **Mandated reporters**: The following persons who, in their professional or official capacity, have reason to suspect that a child is an abused or neglected child, are required by law to report the matter immediately to the local department or social services of the county or city wherein the child resides or wherein the abuse or neglect occurred, or if unknown, to the local department of the county or city where discovered, or to the Department's toll-free child abuse and neglect hotline (Code of Virginia § 63.2-1509):
 1. Any person licensed to practice medicine or any of the healing arts;
 2. Any hospital resident or intern, and any person employed in the nursing profession;
 3. Any person employed as a social worker;
 4. Any mental health professional;
 5. Any person associated with or employed by any private organization responsible for the care, custody or control of children;

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6. Any emergency medical services personnel certified by the Board of Health pursuant to § 32.1-111.5, unless such personnel immediately reports the matter directly to the attending physician at the hospital to which the child is transported, who shall make such report forthwith.
- **Patient Applicant:** Patient requesting payment for abortion services under Code of Virginia § 32.1-92.1; Code of Virginia § 32.1-92.2.
 - **Providers of Abortion Services:** A general hospital or other provider, appropriately licensed in the state of Virginia that is providing abortion services for the **Patient Applicant**.
 - **Rape:** Sexual intercourse that is accomplished against the victim's will by force, threat or intimidation, or through the use of mental incapacity or physical helplessness of the victim or with any minor < 13 years of age regardless of the partner's age (Code of Virginia § 18.2-61).

Frequently Asked Questions

To be determined

Training

Training is available through on-the-job training by supervisor. Related trainings on confidentiality policy are available as part of new employee orientation and mandatory coursework.

Policy Administration

This policy will be reviewed and updated by VDH's Director of the Office of Family Health Services as needed but no less frequently than every year.

Approver: _____
Norman Oliver, MD
Deputy Commissioner for Population Health

Date: _____

Approver: _____
Marissa J. Levine, MD, MPH
State Health Commissioner

Date: _____