



Virginia  
Regulatory  
Town Hall

## Emergency Regulation Agency Background Document

<b>Agency Name:</b>	Dept. of Medical Assistance Services (DMAS); 12 VAC 30
<b>VAC Chapter Number:</b>	12 VAC 30-50
<b>Regulation Title:</b>	Services Provided to Categorically and Medically Needy, Other Laboratory and X-Ray Services, and Physician's Services.
<b>Action Title:</b>	Coverage of Prior Authorization for MRI, CAT, and PET Scans.
<b>Date:</b>	GOV ACTION NEEDED BY 06/27/2003

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

### Emergency Preamble

*Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).*

*Please include a brief summary of the emergency action. There is no need to state each provision or amendment.*

This regulatory action qualifies as an emergency, pursuant to the authority of the *Code of Virginia*, 1950 as amended, § 2.2-4011, because it is responding to a mandate in the 2003 Virginia Appropriations Act (Item 325 WW as passed by the 2003 General Assembly) that must be effective within 280 days from the date of its enactment and this regulatory action is not otherwise exempt under the provisions of the *Code* § 2.2-4006.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.*

*Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.*

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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.

## Substance

*Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

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The sections of the State Plan for Medical Assistance affected by this action are: Services provided to Categorically Needy and to Medically Needy [Attachments 3.1-A and 3.1-B (12 VAC 30-50, sections 10, 20, 50 and 60)] and Services Provided to the Categorically Needy [Supplement 1 to Attachment 3.1 A&B (12 VAC 30-50, sections 120 and 140)].

Currently there are no prior-authorization requirements for non-emergency, outpatient Magnetic Resonance Imaging (MRI), Computer Axial Tomography (CAT) scans, or Positron Emission Tomography (PET) scans. Item 325 WW of the 2003 Appropriations Act directs DMAS to promulgate emergency regulations to require prior authorization of MRI, CAT, and PET scans. This budget reduction initiative is being implemented because past experience with these high cost tests indicates that the ready access to these scans, coupled with a decreased patient risk, may have contributed to indiscriminate overuse of these costly tests.

**Alternatives**

*Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.*

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The Agency was not permitted any alternative policies due to the legislative mandate.

**Family Impact Statement**

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the 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; or 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.