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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12VAC30, Chapters 10 and 20
Regulation title	Estate Recoveries
Action title	Periodic Review of Estate Recoveries
Document preparation date	January 24, 2006

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).

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this action is to revise the State Plan section on estate recovery by incorporating all applicable aspects of the State Medicaid Manual section on estate recovery. The amended regulation will contain the definitions that are expressly required by the State Medicaid Manual to be in the State Plan which are not there currently, guidelines for recovering from all applicable categories of estates, and it will closely follow the format of the State Medicaid Manual. It will also address areas which are in the State Medical Manual which are currently not in the State Plan. The State Medicaid Manual is provided by the federal Centers for Medicaid and Medicare Services to provide guidance to state medical assistance agencies on administering their respective Medicaid programs. The amended regulation will bring DMAS into compliance with the State Medicaid Manual.

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 Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe 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 (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 2.2-4013, for this agency's promulgation of proposed regulations subject to the Governor's review and approval. Executive Order 21 (2002) requires the periodic review of existing regulations.

The Medicaid Estate Recovery program was mandated by the federal Omnibus Budget Reconciliation Act of 1993, as codified at 42 U.S.C. § 1396p(b)(1)(B) of the *Social Security Act* [42 USC 1396p], which requires the Commonwealth to seek adjustment or recovery from certain beneficiaries' estates. Section 3810 of the Centers for Medicare and Medicaid Services State Medicaid Manual (SMM) provides the Commonwealth with instructions on Medicaid estate recovery and specifies what aspects of Medicaid estate recovery must be in the State Plan. Section 32.1-326.1 of the Code of Virginia directs DMAS to comply with the federal requirements and operate a Medicaid estate recovery program.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the regulation is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

Sections 4.17(f), 12VAC30-10-560, and Attachment 4.17-C, 12VAC30-20-140, of the State Plan for Medical Assistance are affected by this change.

A periodic review of the 12VAC30-20-140, "Estate Recoveries," indicated that the regulation did not fully comply with the State Medicaid Manual. Unlike the State Medicaid Manual, the regulation did not address estate recovery from the estates of beneficiaries who were the following: dual eligibles; enrolled in managed care programs; who were American Indians or Alaskan Natives; or individuals with long term care insurance policies, annuities, or reparation payments. Nor did the regulation comply with the State Medicaid Manual's direction to "[d]escribe your methodology for determining a home of modest value in your State plan." The regulation did describe what it considered to be "cost effective" estate recoveries but it was not formatted as a definition.

This regulatory action repeals 12VAC30-20-140 and re-promulgates 12VAC30-20-141 on estate recovery to conform to federal Medicaid law and guidelines. Per the requirements of § 3810 of the State Medicaid Manual, the changes are as follows: (i) the definitions of “homestead of modest value” and “cost effective” were added; (ii) the action follows the format of the State Medicaid Manual section on estate recoveries; the definitions of “estate” and “applicable medical assistance payments” were removed from a preprint page of the State Plan and placed in Attachment 4.17-C (12VAC30-20-141) along with the other definitions; and (iii) guidelines for recoveries from the estates of beneficiaries who were dual eligibles, enrolled in managed care programs, who were American Indians or Alaskan Natives, and individuals with long term care insurance policies, annuities, or reparation payments were added.

Adding the definition of “homestead of modest value” to the regulatory action will comply with the State Medicaid Manual requirement and avoid the potential for arbitrary or unfair case-by-case decisions.

The following changes which make the regulatory action conform to the State Medicaid Manual’s format will simplify and possibly hasten CMS’s review of the State Plan Amendment: (i) putting the description of “cost effective” into a definition; and (ii) removing the definitions of “estate” and “applicable medical assistance payments” from the State Plan itself and placing them along with the other definitions in Attachment 4.17-C. Placing the definitions of “estate” and “applicable medical assistance payments” in Attachment 4.17-C will make it easier for the DMAS Medicaid Estate Recovery Unit to adhere to the regulation because those definitions will be contained in the regulation along with the standards which reference those definitions.

The DMAS “Notice of Claim,” which is sent to estates claiming Medicaid estate recovery, currently contains some of the required guidelines in the State Medicaid Manual. This regulatory change will require revision of the DMAS “Notice of Claim” so that it contains the following procedural protections for the estates of Medicaid beneficiaries: the action DMAS intends to take; the reason for the intended action; and the requirement that the estate administrator, executor, or legally authorized representative notify individuals who would be affected by the proposed recovery.

Other collection issues were addressed in the State Medicaid Manual but not in the DMAS regulations. Specifically, 1) in the event that DMAS is unable to verify a deceased beneficiary’s estate administrator, executor, survivor, or heir, DMAS shall not pursue estate recovery, 2) DMAS may establish a reasonable payment schedule subject to reasonable interest, 3) DMAS may undertake partial estate recovery, or 4) waive estate recovery when it would not be cost effective for the Commonwealth. These procedures were being followed by the DMAS Medicaid Estate Recovery Unit, but these guidelines were never in the regulations.

This regulatory action is expected to help protect the rights of Medicaid beneficiaries by providing additional guidance for the DMAS Medicaid Estate Recovery Unit that will decrease the likelihood of estate recovery from exempt assets and resources.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

By retaining the present regulation, DMAS would not be complying with CMS' requirements for the State Plan section on estate recoveries. Specifically, the Commonwealth's definition for "homestead of modest value" must be added to the Plan. The recommended definition (50% or less of the average price of homes in the county where the homestead is located) can be readily supported by reasonably current data for each city and county in the Commonwealth.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

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.

Periodic review

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review, please (1) summarize all public comment received in response to the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 21, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Commenter	Comment	Agency response

Enter statement here

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