Virginia Regulatory Town Hall

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Exempt Action Final Regulation
Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30 -5
Regulation title	Public Participation Guidelines
Action title	Public Participation Guidelines
Final agency action date	
Document preparation date	

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The regulations that are promulgated by this action are entitled Public Participation Guidelines (PPGs) (12 VAC 30-5-10 et seq.). The regulations repealed in this action are entitled Public Participation Guidelines (12VAC30-100-10 through 100-60).

The Department's original public participation guidelines were duly promulgated in 1985 and reflected, to the agency's best ability at that time, all of the public participation requirements contained in the then-current Administrative Process Act. In the intervening years, numerous modifications have been made to the *Code of Virginia* § 2.2-4000 *et seq.*, the Administrative Process Act (APA), to address the evolving needs of various regulated communities and state agencies charged with regulating numerous aspects of life and business in the Commonwealth.

Public participation guidelines exist to promote public involvement in the development, amendment, or repeal of state regulations. By action of the 2008 General Assembly in Chapters

321 and 575 and under Virginia Code § 2.2-4007.02, every rulemaking body in Virginia is required to adopt new public participation guidelines and to use these guidelines in the development of its regulations. The legislative intent of Chapters 321 and 575 was to standardize the public participation process so that interested members of the public would know how and when to comment and/or participate in various topics of interest. When the statutory amendments took effect on July 1, 2008, agencies were given until December 1, 2008, to either adopt the model public participation guidelines issued by DPB, or, if agencies need to make significant changes to the guidelines, to file the proposed regulatory action with DPB by that time. Agencies are not permitted to promulgate any other regulations until their new public participation guidelines are in effect.

The most significant differences, to DMAS, in these new model PPGs are as follows:

- Provision is made for two types of voluntary citizen advisory panels.
  - Negotiated Rulemaking Panels (NRPs). NRPs have been designed to be used in situations where an agency expects a great deal of controversy and/or there are a significant number of stakeholders. Situations that could involve a NRP are usually those that could be costly and for which consensus cannot be achieved without a facilitator. The facilitator can be any qualified individual of the agency's choosing so long as the agency has the necessary legal authority and financial resources to hire the person. NRP meetings must be posted on the Town Hall/Commonwealth Calendar in accordance with the APA and the Freedom of Information Act (FOIA).
  - Regulatory Advisory Panels (RAP): RAPs have been designed to be used in situations where a regulation is fairly complex or would affect numerous stakeholders. RAPs tend to be technical in nature, such as cases in which subject-matter experts are used to "flesh out" the regulation in its development stages. RAP meetings must be posted on the Town Hall/Commonwealth Calendar in accordance with the APA and FOIA.
- Open meetings has been defined to exclude groups of state employees who may meet to discuss a program or proposed regulatory action.
- Agencies are required to maintain lists of persons, called Interested Persons List, who have expressed an interest in the agency's regulatory activities. Agencies may not delete persons from its list after a single instance of returned mail, either electronic or physical postal system mail. Such Interested Persons must be kept apprised of all agency regulatory activities and meetings. Such Interested Persons must be given 7 days advance notice of meetings scheduled for the purpose of the discussion of regulatory actions.
- Public comment periods may be extended by agencies in the interest of honoring public participation. However, agencies that elect to do this must do so in a consistent, uniform manner so as not favor one special interest group in the regulated community over another special interest group.

- Public hearings on regulations held during public comment periods for proposed regulations should be held, wherever practicable, no less than 15 days prior to the close of the comment period and in locations that facilitate public participation. Notice of such public hearings must be posted at least 7 working days prior to the meeting's date.

These new PPG requirements are not expected to create a substantial difference in the agency's current regulation promulgation processes. DMAS has a long record of successful use of Regulatory Advisory Panels and expects this success to be continued with the new PPGs.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

I hereby approve the foregoing Regulatory Review Summary with the attached amended regulations entitled Public Participation Guidelines (12VAC 30-5) and adopt the action stated herein. I certify that this final regulatory action has completed all the requirements of the *Code of Virginia* § 2.2-4012, of the Administrative Process Act.

_____ _____

Date

Patrick W. Finnerty, Director

Dept. of Medical Assistance Services

Family impact

Assess the impact of this 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.