# REGULATORY REVIEW CHECKLIST

To accompany Regulatory Review Package

**Agency** Department of Medical Assistance Services

**Regulation title** Medicaid Fraud/Abuse Detection/Investigation; Free Choice of Providers; Conflict of Interest

**Purpose of the regulation** To incorporate new federally issued preprinted Plan pages into the Medicaid Plan which concern the elimination of waste, fraud, and abuse (technical amendment)

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**Summary of items attached:**

☒ **Item 1:** A copy of the proposed new regulation or revision to existing regulation.

☒ **Item 2:** A copy of the proposed regulation submission package required by the Virginia Administrative Process Act (Virginia Code Section 9-6.14:7.l.G [redesignated Section 9-6.14:7. l.H after January 1, 1995]). These requirements are:

- ☒ (i) the basis of the regulation, defined as the statutory authority for promulgating the regulations, including the identification of the section number and a brief statement relating the content of the statutory authority to the specific regulation proposed.
- ☒ (ii) the purpose of the regulation, defined as the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety and welfare.
- ☒ (iii) the substance of the regulation, defined as the identification and explanation of the key provisions of the regulation that make changes to the current status of the law.
- ☒ (iv) the issues of the regulation, defined as the primary advantages and disadvantages for the public, and as applicable for the agency or the state, of implementing the new regulatory provisions.
- ☒ (v) the estimated impact, defined as the projected number of persons affected, the projected costs, expressed as a dollar figure or range, for the implementation and compliance thereof, and the identity of any localities particularly affected by that regulation.

☒ **Item 3:** A statement from the Attorney General that the agency possesses, and has not exceeded, its statutory authority to promulgate the proposed regulation.

## Regulatory Review Checklist
## Page Two

☒ **Item 4:** A statement disclosing whether the contemplated regulation is mandated by state law or federal law or regulation, and, if mandated in whole or in part, a succinct statement of the source (including legal citation) and scope of the mandate, together **with an attached copy of all cited legal provisions.**

☒ **Item 5:** For any proposed regulation that exceeds the specific minimum requirements of a legally binding state or federal mandate, a specific rather than conclusory statement setting forth the reasoning by which the agency has concluded that the proposed regulation is essential to protect the health, safety or welfare of citizens or for the efficient and economical performance of an important governmental function.

☒ **Item 6:** For any proposed regulation that exceeds the specific minimum requirements of a legally binding state or federal mandate, a specific rather than conclusory statement describing the process by which the agency has considered less burdensome and less intrusive alternatives for achieving the essential purpose, the alternatives considered, and the reasoning by which the agency has rejected such alternatives.

☒ **Item 7:** A schedule setting forth when, no later than three (3) years after the proposed regulation is effective, the agency will initiate a review and reevaluation of the regulation to determine if it should be continued, amended, or terminated. Include a description of the specific and measurable goals the proposed regulation is intended to achieve, if practical.

☒ **Item 8:** A detailed fiscal impact analysis prepared in coordination with DPB that includes: (a) the projected cost to the state to implement and enforce the proposed regulation and (b) the source of funds to meet this projected cost.

| /s/ Dennis G. Smith | Aug. 20, 1999 | 10/24/99 VPS |
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| Signature of Agency head | Date | Date forwarded to DPB & Secretary |

REGULATORY REVIEW SUMMARY

Amendment to the Plan for Medical Assistance

I. IDENTIFICATION INFORMATION

Title of Final Regulation: Elimination of Waste, Fraud, and Abuse: Technical Amendment

Director's Adoption: August 20, 1999

Effective Date: October 13, 1999

Agency Contact: Dave Austin, Manager
Division of Program Operations
Dept. of Medical Assistance Services
600 E. Broad St., Suite 1300
Richmond, Virginia 23219
(804) 786-3220

II. SYNOPSIS

Basis and Authority: 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 the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the Board's requirements. Section 9-6.14:4.1 C contains agency exemptions otherwise subject to the public notice and comment requirements of Article 2 of the APA due to conformance to federal mandates.

The Health Care Financing Administration issued Program Memorandum Transmittal Number 99-3 in June 1999. This PM 99-3 conveyed three revised State Plan preprinted pages to the states for inclusion in their Title XIX State Plans.

Purpose: The purpose of this Plan action is to amend the Plan for Medical Assistance to incorporate newly issued preprinted pages at the direction of the Health Care Financing Administration. This action will have no affect on the health, safety, or welfare of citizens of the Commonwealth.

Substance and Analysis: The sections of the State Plan affected by this action are § 4.5a Medicaid Agency Fraud Detection and Investigation Program (12 VAC 30-10-441), § 4.10 Free Choice of Providers (12 VAC 30-10-490), § 4.29 Conflict of Interest Provisions (12 VAC 30-10-680).

Section 4724 of the *Balanced Budget Act of 1997*, Elimination of Waste, Fraud and Abuse, required states to implement several provisions. These provisions were enacted to help combat waste, fraud, and abuse by providers and others paid with Medicaid funds for services and/or supplies. These provisions include:

Ban on Spending for Nonhealth Related Items (BBA §4724(a))

Section 1903(i)(17) imposed an explicit ban on the use of Federal Medicaid matching funds for nonhealth related items such as bridges, roads, stadiums, or any other item or service not covered by a State's Medicaid plan. This provision was effective upon enactment (August 5, 1997). This provision is a further clarification of p.1 State Plan Submittal Statement of the State Plan Preprint.

Conflict of Interest Safeguards (BBA §4724(c))

Current law bans any current or former State or local officer or employee and partners thereof, that are or were responsible for the expenditure of substantial amounts under the State plan, from committing any act prohibited by section 207 or 208 of title 18 of the United States Code. Section 1902(a)(4)(C) expands and enhances the local officer, employee and each partner thereof, to include independent contractors. Additionally, section 1902(a)(4)(D) requires that any State or local officer, employee, or independent contractor who is responsible for selecting, awarding, or otherwise obtaining items and services under a Medicaid State plan, be subject to safeguards against conflicts of interest that are at least as stringent as the safeguards that apply under section 27 of the Office of *Federal Procurement Policy Act* (41 U.S.C. 423) to persons described in subsection (a)(2) of such section of that *Act*. These provisions were effective January 1, 1998. Section 4.29, Conflict of Interest Provisions of the State Plan Preprint (page 77), has been revised to incorporate these new provisions.

Authority to Refuse to Enter Into Medicaid Agreements With Individuals or Entities Convicted of Felonies (BBA §4724(d))

This provision is a clarification of current law. Generally, Medicaid beneficiaries are free to obtain services from any approved providers that undertake to provide them. This new

provision, at section 1902(a)(23), clarifies that States are now permitted to bar persons or entities who have been convicted of a felony under Federal or State law from participating as Medicaid providers if the State determines that their offenses are inconsistent with the best interests of the Medicaid beneficiaries under the State plan. This provision became effective upon enactment of the *BBA*, August 5, 1997. Section 4.10, Free Choice of Providers of the State Plan Preprint (page 41), has been revised to incorporate this clarification.

Beneficiary and Program Protection Against Waste, Fraud, and Abuse (BBA §4724(f))

This new provision, at section 1902(a)(64), requires States to establish, not later than one year after enactment (i.e., August 5, 1998), a mechanism to receive reports from beneficiaries and others and compile data on alleged instances of waste, fraud, and abuse in the Medicaid program. It is the State's responsibility to develop a mechanism for collecting data on waste, fraud, and abuse situations that are brought to its attention. The collection of these data can be accomplished through the use of written reports, oral reporting; e.g., beneficiary hot lines, or other means determined by the States. This provision was effective upon enactment, August 5, 1997. However, the States had until August 5, 1998, to provide the mechanism to receive the reports. A new page has been added to section 4.5, Medicaid Agency Fraud Detection and Investigation Program of the State Plan Preprint (page 36a), to incorporate this new provision.

DMAS policies and operations already comply with these requirements so no changes are being effected by this regulatory action.

Issues: The advantage to the citizens of the Commonwealth of the Medicaid Program conducting fraud detection and elimination activities is that federal and state tax dollars will be accurately and appropriately expended on covered services provided to eligible recipients by enrolled practitioners and providers. This benefits recipients and providers, as well as the taxpayer. The only individuals who are disadvantaged by this Medicaid activity are those who attempt to fraudulently obtain Medicaid funds. Therefore, the agency projects no negative issues involved in this regulatory action.

Impact: There is no fiscal impact to report because no policy or operational changes are being effected. There are no localities which are uniquely affected by these regulations as they apply statewide.

Forms: No new forms will be required for implementation of this regulation.

Evaluation: The Department of Medical Assistance Services will include the monitoring of its fraud and abuse detection activities in its ongoing Plan monitoring activities.

III. STATEMENT OF AGENCY FINAL ACTION

I hereby approve the foregoing Regulatory Review Summary and take the adoption action stated therein. Because this final regulation is exempt from the public notice and comment requirements of the Administrative Process Act (Code 9-6.14:4.1 C), the Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

August 20, 1999
Date

/s/ Dennis G. Smith
Dennis G. Smith, Director
Dept. of Medical Assistance Services