



## Final Exempt Regulation Agency Background Document

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30-5
<b>Regulation title</b>	Public Participation Guidelines
<b>Action title</b>	PPG Right to Representation
<b>Date this document prepared</b>	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

This action conforms the Department's Public Participation Guidelines with Chapter 795 of the 2012 *Acts of the Assembly*. This action adds that individuals have a right to representation in hearings and public comment periods to the agency's Public Participation Guidelines.

### 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 or board taking the action, and (3) the title of the regulation.*

I hereby approve the foregoing Regulatory Review Summary with the attached amended regulations PPG Right to Representation (12 VAC 30-5 *et seq.*) and adopt the action stated

therein. 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.

7-18-13

Date

/s/ Cynthia B. Jones

Cynthia B. Jones, Director

Dept. of Medical Assistance Services

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory 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 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.

Chapter 795 of the *2012 Acts of Assembly* mandated that agencies' public participation guidelines permit interested persons to be accompanied by and be represented by counsel during while providing comments during the agency's public comment periods. This action is exempt from public comment pursuant to the *Code of Virginia* § 2.2-4006 (A)(4)(a).

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of this action is to comport the DMAS Public Participation Guidelines (12 VAC 30-5 et.seq.) with Chapter 795 of the *2012 Acts of the Assembly*.

**Substance**

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

This action affects DMAS' Public Participation Guidelines as set out in 12 VAC 30-5, specifically sections 12 VAC 30-5-50 and 12 VAC 30-5-100.

CURRENT POLICY

Even though in practice, DMAS provides for all individuals who bring issues to the agency's attention to be represented (by either counsel or other individuals), its Public Participation Guidelines did not explicitly state this.

RECOMMENDATIONS

The Public Participation Guidelines are recommended for modification to explicitly state that all individuals who wish to submit public comments about regulatory actions or make public comments during an agency public hearing, may be represented by counsel or another representative.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*  
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*  
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*  
 3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

This action effects no changes in DMAS' operations because it has always permitted individuals to be represented.

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.*

<b>Section number</b>	<b>Requirement at proposed stage</b>	<b>What has changed</b>	<b>Rationale for change</b>
5-50 and 5-100		Requires agency to permit all interested persons to be represented by either counsel or other representative	Conformance to Chapter 795 of the 2012 Acts of the Assembly.