




COMMONWEALTH of VIRGINIA
Office of the Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120

Mark R. Herring
Attorney General

TO: **BRIAN MCCORMICK**
Regulatory Supervisor
Virginia Department of Medical Assistance Services

FROM: **MICHELLE A. L'HOMMEDIEU**
Assistant Attorney General 

DATE: **January 7, 2015**

SUBJECT: **Fast Track Regulations Regarding 2014 Medicaid Works-Federal Changes
(4275/7083)**

I am in receipt of the attached regulations to add references to Work Incentive (WIN) accounts and to allow certain income deposited into these accounts to not be counted when determining the working Medicaid recipient's financial eligibility. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services ("DMAS") has the legal authority to promulgate these regulations and if they comport with state and federal law.

Based on that review, it is my view that the Director, acting on behalf of the Board of Medical Assistance Services pursuant to Virginia Code §§ 32.1-324 and 325, has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

Pursuant to Va. Code § 2.2-4012.1, if an objection to the use of the fast-track process is received within the public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, DMAS shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process set out in this article with the initial publication of the Fast-Track regulation serving as the Notice of Intended Regulatory Action.

Brian McCormick

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Because these regulations will amend the State Plan, approval by CMS will also be required. It is the understanding of this Office that the requested change and amendments have already been approved by CMS. If you have any questions or need additional information about these regulations, please contact me at 786-6005.

cc: Kim F. Piner, Esq.

Attachment

12VAC30-40-280. More liberal income disregards.

A. For children covered under §§ 1902(a)(10)(A)(i)(III) and 1905(n) of the Social Security Act, the Commonwealth of Virginia will disregard one dollar plus an amount equal to the difference between 100% of the AFDC payment standard for the same family size and 100% of the federal poverty level for the same family size as updated annually in the Federal Register.

B. For ADC-related cases, both categorically and medically needy, any individual or family applying for or receiving assistance shall be granted an income exemption consistent with the Act (§§ 1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§ 1902(a)(10)(A)(ii)(VIII), (IX); § 1902(a)(10)(C)(i)(III)). Any interest earned on one interest-bearing savings or investment account per assistance unit not to exceed \$5,000, if the applicant, applicants, recipient or recipients designate that the account is reserved for purposes related to self-sufficiency, shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. For purposes of this section, "purposes related to self-sufficiency" shall include, but are not limited to, (i) paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school, or any college or university; (ii) for making down payment on a primary residence; or (iii) for establishment of a commercial operation that is owned by a member of the Medicaid assistance unit.

C. For the group described in §§ 1902(a)(10)(A)(i)(VII) and 1902(l)(1)(D), income in the amount of the difference between 100% and 133% of the federal poverty level (as revised annually in the Federal Register) is disregarded.

D. For aged, blind, and disabled individuals, both categorically and medically needy, with the exception of the special income level group of institutionalized individuals, the Commonwealth of Virginia shall disregard the value of in-kind support and maintenance when determining

eligibility. In-kind support and maintenance means food, clothing, or shelter or any combination of these provided to an individual.

E. For all categorically needy and medically needy children covered under the family and children covered groups, (§§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I) and 1905(n) of the Act), the Commonwealth will disregard all earned income of a child under the age of 19 who is a student.

F. For all categorically needy and medically needy individuals covered under the family and children covered groups (§§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(V), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I) and 1905(n) of the Act), the Commonwealth will disregard the fair market value of all in-kind support and maintenance as income in determining financial eligibility. In-kind support and maintenance means food, clothing or shelter or any combination of these provided to an individual.

G. Working individuals with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act who wish to increase their earnings while maintaining eligibility for Medicaid must establish Work Incentive (WIN) accounts (see 12VAC30-40-290).

1. The Commonwealth shall disregard any increase in the amount of unearned income in Social Security Disability Insurance (SSDI) payment resulting from employment as a worker with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XVI) of the Act, or as a result of a COLA adjustment to the SSDI payment, if this additional amount of unearned income in SSDI payment from work or COLA, or both, is deposited into the individual's designated WIN account.

2. The Commonwealth shall disregard any amount of unearned income of an enrollee as a result of the receipt of unemployment insurance benefits due to loss of employment

through no fault of his own, if this unearned income from unemployment insurance payments is deposited into the individual's designated WIN account. This disregard shall only apply while an enrollee is in the six-month safety net, or "grace" period.

3. The Commonwealth shall disregard earned income up to \$75,000 for workers with disabilities eligible for assistance under § 1902(a)(10)(A)(ii)(XV) of the Act. To be eligible for this earned income disregard, the income is subject to the following provisions:

a. Only earnings that are deposited into a Work Incentive (WIN) account can be disregarded for eligibility purposes.

b. All funds deposited and their source will be identified and registered with the department, for which prior approval has been obtained from the department, and for which the owner authorizes regular monitoring and/or reporting of these earnings and other information deemed necessary by the department for the proper administration of this provision.

c. ~~A spouse's income will not be deemed to the applicant~~ Income from the individual's spouse or, if under age 21, the individual's parents with whom he lives, will not be deemed to an applicant for MEDICAID WORKS or to an existing enrollee in MEDICAID WORKS when determining whether or not the individual meets the financial eligibility requirements for eligibility under this section.

H. For aged, blind and disabled individuals, both categorically and medically needy, with the exception of the special income level group of institutionalized individuals, the Commonwealth of Virginia shall disregard the value of income derived from temporary employment with the United States Census Bureau for a decennial census.

I. For all categorically needy and medically needy individuals covered under the family and children covered groups (§§ 1902(a)(10)(A)(i)(I), 1902(a)(10)(A)(i)(III), 1902(a)(10)(A)(i)(IV),

1902(a)(10)(A)(i)(V), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), 1902(a)(10)(A)(ii)(VIII), 1902(a)(10)(C)(ii)(I) and 1905(n) of the Act), the Commonwealth will disregard income derived from the temporary employment with the United States Census Bureau for a decennial census.

Statutory Authority

§ 32.1-325 of the Code of Virginia.

Historical Notes

Derived from VR460-03-2.6108.1, eff. March 9, 1995; amended, Virginia Register Volume 17, Issue 13, eff. April 11, 2001; Volume 18, Issue 18, eff. July 1, 2002; Volume 18, Issue 23, eff. September 1, 2002; Volume 20, Issue 4, eff. December 3, 2003; Volume 20, Issue 22, eff. September 25, 2004; Volume 25, Issue 11, eff. March 19, 2009; Volume 25, Issue 21, eff. July 23, 2009; Volume 30, Issue 5, eff. December 19, 2013.