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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Department of Medical Assistance Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	_12_ VAC_30_-_40__
<b>Regulation title(s)</b>	Eligibility Conditions and Requirements
<b>Action title</b>	2014 Medicaid Works – Federal Changes
<b>Date this document prepared</b>	October 24, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

The changes reflected in this regulatory action were required by the Centers for Medicare and Medicaid Services (CMS) during its review and approval of DMAS' State Plan Amendment for Medicaid Works. CMS required DMAS to add references to the Work Incentive (WIN) accounts that individuals who are both disabled and employed are required to have. Additional funds from increased monthly cash benefits, such as Cost of Living Adjustments (COLA) or unemployment insurance payments, that may accrue to these individuals are required to be deposited into their WIN accounts. Also, income from an individual's spouse or the parents of a child who is disabled may not be counted towards that individual's income when the financial eligibility process is conducted.

**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 Agency Background Document with the attached amended State Plan pages (12 VAC 30-40-280) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012.1, of the Administrative Process Act.

/s/ 11/18/2014

Date

Cynthia 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.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation 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 conform the Virginia Administrative Code to the federally approved State Plan Attachment 2.6-A, Supplement 8b, More Liberal Income Disregards. This action will not affect the health, safety or welfare of citizens of the Commonwealth.

### Rationale for using fast-track process

*Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

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This action is not controversial because it is beneficial to Medicaid individuals who are disabled who wish to be employed.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.*

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The section of the State Plan for Medical Assistance that will be affected by this action is: the Eligibility Conditions and Requirements--More Liberal Income Disregards (12 VAC 30-40-280).

MEDICAID WORKS was created under the flexibility permitted by the Deficit Reduction Act of 2005 (DRA). One of the issues faced by Medicaid enrollees who have disabilities is that while many have the capacity to be gainfully employed, the extra income earned has caused them to lose their Medicaid eligibility. Retaining Medicaid eligibility is very important to individuals who have disabilities because of the extremely high costs of their medical care. Because one purpose of the program is to provide incentives for Medicaid individuals to be employed, eligible enrollees who have disabilities are permitted higher income limits.

The previous regulatory action implemented an increase in the maximum allowable gross earnings for participants in the program to the maximum gross income amount allowed under the Ticket to Work and Work Incentives Improvement Act before a premium is required. This amount is calculated to be \$75,000 in gross annual earnings. This previous change was mandated by HB 2384, Chapter 506 of the *2011 Acts of the Assembly*.

The previous regulatory action also adjusted MEDICAID WORKS policy to mitigate the negative impact (i.e., loss of Medicaid eligibility) of higher earned income or higher unearned income as a result of participating in this work incentive program. The State Plan was amended to enable a disregard for any increase in the amount of unearned income in the Social Security Disability Insurance (SSDI) payment resulting from employment as a worker with disabilities eligible for assistance under the Ticket to Work and Work Incentives Improvement Act, or as a result of a COLA to the SSDI payment.

To disregard increases of monthly SSDI payments, the enrollee will be required to routinely deposit the amount of the monthly increase into his designated Work Incentive (WIN) Account.

Additional policy also will disregard any unemployment insurance payments received by an enrollee as a result of loss of employment through no fault of his own. This will protect the individual’s MEDICAID WORKS eligibility for the existing six-month safety net or “grace” period triggered by loss of employment. A final policy change under this regulatory action will be to discontinue the deeming of a spouse’s income or, if the individual is under age 21, the income of the parents with whom he lives. This particular change will apply to eligibility determinations of both applicants and existing enrollees in the MEDICAID WORKS program.

### 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.*

The MEDICAID WORKS program permits individuals who are disabled, and Medicaid eligible as a result of their disabilities, to be employed. The advantage of this action is that it will permit such individuals to earn and retain more income without risking the loss of their Medicaid eligibility. There are no disadvantages to either the Commonwealth or provider groups.

### Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

The changes implemented by this action conform to federal requirements.

### Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

There will be no localities that are more affected than others as these requirements will apply statewide.

### Regulatory flexibility analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

This regulatory action is not expected to affect small businesses as it does not impose compliance or reporting requirements, nor deadlines for reporting, nor does it establish performance standards to replace design or operational standards.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</b>	\$0
<b>Projected cost of the new regulations or changes to existing regulations on localities.</b>	\$0
<b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b>	Individuals who are eligible due to their disabilities will be affected by this program. To date, DMAS has enrolled fewer than 100 individuals in this program.
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	\$0
<b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential</b>	\$0

<p><b>purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>MEDICAID WORKS permits Medicaid individuals who are also disabled to work. This action will permit them to retain more of their earned income without losing their eligibility for Medicaid.</p>

### Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

DMAS was not permitted to develop alternative policies as these were required by CMS.

### Family Impact

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) 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; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; nor 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.

### Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency regulation** and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

Current	Proposed	Current requirement	Proposed change, intent, rationale, and
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section number	new section number, if applicable		likely impact of proposed requirements
12 VAC 30-40- 280 G(1)		DMAS disregards increases in the amount of unearned income from SSDI resulting from employment or as a result of a COLA.	The additional funds are required to be deposited into a Work Incentive account.
12 VAC 30-40- 280 G(2)		DMAS disregards increases in the amount of unemployment insurance payments.	The additional funds are required to be deposited into a Work Incentive account.
12 VAC 30-40- 280 G (3)(c)		Spousal income is not deemed to the Medicaid individual for the purpose of the MEDICAID WORKS program.	Neither spousal income nor parental income for a Medicaid individual who is younger than 21 will be deemed to the individual for the purpose of the MEDICAID WORKS program.