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## Proposed Regulation Agency Background Document

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation(s)</b>	12 VAC 30-40-290 and 12 VAC 30-40-370
<b>Regulation title(s)</b>	More Liberal Income Disregards; More Liberal Methods of Treating Resources Under 1902(r )(2); Variations From the Basic Personal Needs Allowance
<b>Action title</b>	Disregard Sterilization Compensation Payments as Income and Resources
<b>Date this document prepared</b>	4/4/2016

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

This regulatory action promulgates regulations to disregard payments, for the purpose of Medicaid eligibility determinations, made to compensate individuals who were involuntarily sterilized pursuant to the Virginia Eugenic Sterilization Act and who are living as of February 1, 2015.

The General Assembly directed the Department of Medical Assistance Services to seek authority from the Centers for Medicare and Medicaid Services to disregard these payments in

determinations of Medicaid eligibility. In response to this mandate, DMAS promulgated emergency regulations, which went into effect on November 23, 2015. In this document, and with the related regulatory text, DMAS is seeking to implement regulations that will make these changes on a permanent basis.

## Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

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DBHDS = Department of Behavioral Health and Developmental Services

DMAS = Department of Medical Assistance Services

## Legal basis

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

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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.

The *2015 Acts of the Assembly*, Chapter 665, Item 307 T directed DMAS to modify its eligibility regulations to exempt sterilization compensation (to be awarded to individuals who had been involuntarily sterilized under previous state policy) from consideration during the Medicaid eligibility determination process.

The *2016 Acts of the Assembly*, Chapter 780, Item 313.Q continued funding for the sterilization compensation program.

## 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.*

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The purpose of this action is to allow individuals, who are compensated for their involuntary sterilization, to accept their monetary compensation without losing their eligibility for Medicaid.

## 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 is affected by this action is the Eligibility Conditions and Requirements, More Liberal Income Disregards (12 VAC 30-40-290) and creates the new section Variations from the Personal Needs Allowance (12 VAC 30-40-370).

### CURRENT POLICY

Unless otherwise exempted by state or federal requirements, all income an individual receives must be counted in the Medicaid eligibility determination. Similarly, all money an individual has at the beginning of a month either in his hand or in a financial institution account must be considered a resource in the Medicaid eligibility determination. Money an individual has cannot be counted as both income and a resource in the same month, so payments received by individuals would be counted as income the month received and, if retained, a resource in following months.

### ISSUES

Current policy would require payments (awards, settlements) made to individuals involuntarily sterilized as a result of the Virginia Eugenical Sterilization Act to be counted as income in the month of receipt of the payment and, if retained, a resource in following months. Counting this payment as both income in the month of receipt and a resource thereafter could result in individuals losing Medicaid eligibility.

### RECOMMENDATIONS

The General Assembly directed DMAS to seek federal authority to disregard compensation payments received by individuals who were involuntarily sterilized pursuant to the Virginia Eugenical Sterilization Act and who are living as of February 1, 2015. Receipt of federal authority to disregard these payments in the Medicaid eligibility determination will mean that these payments will have no impact on eligibility for new or current enrollees who receive this payment.

## 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.*

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There are no advantages or disadvantages to the public of this action. The advantage to the individuals who were subjected to involuntary sterilization is that they will be compensated, to some degree, for their pain and suffering. In receiving this General Assembly-authorized compensation, they will not lose their Medicaid eligibility. There are no disadvantages to the Commonwealth.

### 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.*

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No parts of this proposal are more restrictive than 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.*

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

### Public participation

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

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In addition to any other comments, the agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Emily McClellan, DMAS, 600 E. Broad Street, Richmond, VA 23220, by phone at (804) 371-4300, by fax at, or by email at [Emily.McClellan@dmas.virginia.gov](mailto:Emily.McClellan@dmas.virginia.gov) . Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

### 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.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including:</b>  <b>a) fund source / fund detail; and</b>  <b>b) a delineation of one-time versus on-going expenditures</b></p>	<p>There are no projected costs to DMAS. DBHDS will be making these Compensation payments.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>There are no new costs to localities based on these new regulations.</p>
<p><b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>This change will affect those individuals who were involuntarily sterilized pursuant to the Virginia Eugenical Sterilization Act and who are living as of February 1, 2015, and who are Medicaid eligible.</p>
<p><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.</p>	<p>No businesses, small or large, will be affected by this action.</p>
<p><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:</b>  <b>a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</b>  <b>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>No impact on businesses.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>Approval of this regulation will allow individuals who were involuntarily sterilized and who are currently receiving Medicaid to not be adversely affected by the receipt of this one time payment.</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.*

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The General Assembly mandate did not permit the agency to consider alternatives.

### 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.*

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There are no requirements in the proposed regulation that adversely affect small businesses.

### 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.*

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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.

### Public comment

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

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No comments were submitted during the NOIRA comment period.

### 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 section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
12 VAC 30-40-290		Sets out more liberal policies for disregarding various sources of income for various eligibility groups.	This action adds the disregard of all amounts received by all aged, blind, or disabled individuals as payment for involuntary sterilization under the Virginia Eugenic Sterilization Act.
	12 VAC 30-40-370	Sets out allowed variations from the standard Personal Needs Allowance.	This action expands the allowance in the Personal Needs Allowance for payments to individuals who were involuntarily sterilized under the Virginia Eugenic Sterilization Act.

There are no differences between the emergency regulation text and the current text.