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Fast-Track Regulation
Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-30-70
Regulation title(s)	Hospital Presumptive Eligibility
Action title	Hospital Presumptive Eligibility
Date this document prepared	10/27/2015

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 action creates a new section in Chapter 30 called "Hospital Presumptive Eligibility" in accordance with federal regulations. The federal regulations require DMAS to allow qualified hospitals to make temporary Medicaid eligibility determinations for individuals who are seeking medical treatment. The Medicaid determinations are made by trained hospital staff based on an assessment of the individual's status as a member of a group (i.e. pregnant women, infants and children under age 19, etc.); their income; state residency; and citizenship status. The hospital then assists the individual in completing and submitting a full Medicaid application for future Medicaid coverage.

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 Regulatory Review Summary entitled Hospital Presumptive Eligibility with the attached regulations (12 VAC 30-30-70) and adopt the action stated therein. I certify that this fast track regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012.1, of the Administrative Process Act.

10/27/2015 _____/signature/_____

Date 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.

This new regulatory text is required by Federal Regulations at 42 CFR 435.1110, which states that DMAS "must provide Medicaid during a presumptive eligibility period to individuals who are determined by a qualified hospital, on the basis of preliminary information, to be presumptively eligible [for Medicaid]…" The regulation states that the requirements of sections 42 CFR 435.1102 and 1103 apply to these determinations.

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 comply with federal regulations, which require DMAS to permit qualified hospitals to make presumptive eligibility determinations.

The regulations protect the health, safety, and welfare of citizens by promoting enrollment in Medicaid for individuals who may be eligible, but who are not enrolled. The changes allow these individuals to receive Medicaid covered services during the presumptive eligibility period. The changes assure individuals timely access to care while a final eligibility determination is made and promote enrollment in Medicaid.

These changes assist both the individual with the cost of the medical care they receive, and assist the hospital, which can be assured of payment for services rendered.

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?*

This regulatory change is expected to be non-controversial because the federal government has required all states to make this change: it is non-discretionary.

Further, the regulatory change is expected to be non-controversial because DMAS engaged stakeholder groups in making certain choices that are permitted by the federal regulations. (These choices are discussed in the "Substance" section below.) DMAS worked closely with the Virginia Hospital and Healthcare Association on both the content of the changes and on training materials for hospitals. As of August 2014, 57 hospitals across Virginia are qualified to make presumptive eligibility determinations.

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.

The section of the State Plan for Medical Assistance affected by this action is Groups Covered and Agencies Responsible for Eligibility Determination (Attachment 2.2-A): Hospital Presumptive Eligibility (12 VAC 30-30-70).

Federal regulations require DMAS to implement these regulatory changes, and establish the requirements that hospitals must meet in order to participate. (The hospitals must be a Medicaid provider, must notify DMAS of their election to make presumptive eligibility determinations, and must do so in accordance with state policies and procedures. The hospital must not have been disqualified for failing to follow these policies and procedures.) DMAS chose to allow hospitals to use an abbreviated online form to determine presumptive eligibility (rather than using the full Medicaid application for this purpose); individuals are not required to sign this

online form. DMAS also chose to require hospitals to assist the individual with completing and submitting a full Medicaid application.

The federal requirements also establish a minimum set of groups that must be considered for possible presumptive eligibility: (i) pregnant women; (ii) infants and children under age 19; parents and other caretaker relatives; (iii) adults if covered by the state; (iv) individuals above 133% of the federal poverty level and under age 65 if covered by the state; (v) individuals eligible for family planning services if covered by the state; (vi) former foster care children; and (vii) individuals needing treatment for breast or cervical cancer if covered by the state. The eligibility determination for these selected groups (groups (i), (ii), (v), (vi) and (vii)) does not require that hospitals evaluate these individuals' resources. Thus, these hospital eligibility determinations are more likely to be more accurate.

Virginia currently does not cover the (iii) adult group or (iv) individuals above 133% of the federal poverty level and under age 65 group, thus is not covering these two groups under hospital presumptive eligibility. DMAS elected not to provide coverage to other non-mandated groups because the other non-mandated groups do require resource tests.

In accordance with federal requirements, presumptive eligibility is determined based on membership in one of the above groups: household income; state residency; and immigration status. State residency and immigration status were options permitted by CMS and chosen by DMAS because this is consistent with the rest of Virginia Medicaid eligibility. Federal regulations establish when the presumptive eligibility period begins (the date the presumptive eligibility determination is made) and ends, which is: the earlier of the (i) day on which a decision is made on a full Medicaid application; or (ii) the last day of the month following the month that the hospital presumptive eligibility determination was made and no full Medicaid application was filed.

CMS required the Commonwealth to set performance standards for hospitals performing presumptive eligibility determinations. Virginia opted to set standards related to (i) the percentage of individuals who submit a full Medicaid application, and (ii) who are subsequently determined to be eligible for Medicaid as a result of that application. In Virginia, the standards are that 85% of individuals who are determined to be presumptively eligible by a hospital must file a full application for Medicaid. Of those individuals, 70% percent must be determined eligible for Medicaid based on their full application. (If hospitals fail to meet these standards after corrective action plans are put into place, their authority to make presumptive eligibility determinations may be terminated.)

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 primary advantages of this regulatory action are that it will enable DMAS to comply with federal requirements; will promote Medicaid enrollment among individuals who are eligible for Medicaid but not enrolled; and will permit hospitals to receive Medicaid reimbursement for covered services rendered.

With regard to hospital reimbursement, services covered during a presumptive eligibility period will be considered Medicaid-covered services for year-end hospital cost reporting purposes. For hospitals that receive supplemental reimbursement for indigent care, the amount of indigent care reimbursement will be reduced due to the increased Medicaid reimbursement.

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.

There are no requirements more restrictive than federal contained in these recommendations.

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.

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**	For payments made in SFY15 for recipients in presumptive eligibility categories, there were: $3,550,396.26 in total expenditures (a match between federal and state expenditures), 19,423 claims paid, and 2,079 unique recipients.
Projected cost of the new regulations or changes to existing regulations on localities.	There are no projected costs to localities.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	Individuals who are determined to be presumptively eligible will be affected by these regulations. Hospitals that elect to make presumptive eligibility determinations will be affected by these regulations.
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. 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.	No small businesses are expected to be affected by these regulations.
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 purposes that are a consequence of the proposed regulatory changes or new regulations.**	There are no costs to affected individuals. The costs to hospitals that elect to participate are unknown. It will require staff time to perform the eligibility determination and enter the data online, but there are hospital savings associated with quick reimbursement for services rendered. There are no projected reporting, recordkeeping, or other administrative costs required for compliance by small businesses. There are no costs related to the development of real estate.
Beneficial impact the regulation is designed to produce.	The regulation is designed to permit individuals who are eligible for Medicaid to enroll and receive benefits. It also is designed to allow hospitals to provide medical treatment to these individuals and to receive Medicaid reimbursement for covered services.

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.

These changes are required by federal regulations. No other alternatives would enable DMAS to meet these federal requirements.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day 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, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

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 section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
	12 VAC 30-30-70(A)	N/A	Establishes requirements for hospitals to be qualified to make presumptive eligibility determinations.
	12 VAC 30-30-70(B)	N/A	Establishes what eligibility groups may be determined presumptively eligible.
	12 VAC 30-30-70(C)	N/A	Establishes what the presumptive eligibility determination shall be based on.
	12 VAC 30-30-70(D)	N/A	Establishes the percentage of individuals who must file a full Medicaid application before the end of the presumptive eligibility period. This standard will be one of the measures reviewed by DMAS as part of its oversight of these activities.
	12 VAC 30-30-70(E)	N/A	Establishes the percentage of individuals who must be determined eligible for Medicaid on the basis of their application. This standard will be one of the measures reviewed by DMAS as part of its oversight of these activities.
	12 VAC 30-30-70(F)	N/A	Establishes the start and end dates of the eligibility period.
	12 VAC 30-30-70(G)	N/A	Establishes the limit on the number of presumptive eligibility periods per person per year.