



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	Dept. of Medical Assistance Services; 12 VAC 30
<b>VAC Chapter Number:</b>	12VAC30-10, 12VAC30-20, 12VAC30-70, and 12VAC30-90
<b>Regulation Title:</b>	Provider Appeals
<b>Action Title:</b>	Provider Appeals
<b>Date:</b>	05/02/2001; Effective 07/01/2001

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

This action will promulgate provider appeal regulations for all provider appeal issues. It also provides for the completion of informal appeals within 180 days and the completion of formal appeals within another 180 days.

**Changes Made Since the Proposed Stage**

*Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.*

No changes have been made to these regulations since they were filed in the Proposed package.

**Statement of Final Agency Action**

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

I hereby approve the foregoing Regulatory Review Summary with the attached amended State Plan pages and adopt the action stated therein.

\_\_\_\_\_  
Date

\_\_\_\_\_  
C. Mack Brankley, Acting Director  
Department of Medical Assistance Services

**Basis**

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.*

The Code of Virginia (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also

provides, in the Administrative Process Act (APA) §§ 9-6.14:7.1 and 9-6.14:9.1, for this agency's promulgation of proposed regulations subject to the Governor's review.

Subsequent to an emergency adoption action, the agency initiated the public notice and comment process as contained in Article 2 of the APA. The emergency regulation became effective on July 1, 2000. The Code, at § 9-6.14:4.1(C) requires the agency to file the Notice of Intended Regulatory Action within 60 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action for this regulation was filed with the Virginia Register on August 23, 2000.

### Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of this action is to promulgate permanent regulations to provide for provider appeals of reimbursement issues. These permanent regulations are not expected to have a direct impact on the public's health, safety, or welfare.

### Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.*

The sections of the State Plan affected by this action are section 7.5 Provider Reimbursement Appeals (12VAC 30-10-1000) and Provider Reimbursement Appeals (Attachment 7.5) (12 VAC 30-20-500 through 12 VAC 30-20-599). Several existing State Plan sections are also being repealed by this action as they no longer accurately describe the provider appeal process: 12 VAC 30-70-140 through 12 VAC 30-70-145; 12 VAC 30-90-130 through 12 VAC 30-90-133 and 12 VAC 30-90-135.

Presently, the State Plan for Medical Assistance contains language addressing provider appeals via the inpatient hospital reimbursement and the nursing facility reimbursement methodologies. These existing regulations have been superseded in intent and outcome by the passage of House Bill 892 (HB 892) and therefore, are being repealed.

On April 9, 2000, the 2000 General Assembly passed and the Governor enacted, HB 892, which requires the processing of provider appeals within six months at the informal level and within six months at the formal level. If the Department does not meet its statutory time frames, then the

appeal decision is deemed to be in favor of the appealing provider, as provided in the new statute. The statute applies to all administrative appeals filed on or after July 1, 2000. In order to conduct these appeals to conclusion within the statutorily set time limits, DMAS must include the various specified time periods in the State Plan for Medical Assistance.

In developing the previous emergency regulations, DMAS conferred with five affected provider organizations: the Virginia Health Care Association (VHCA), the Virginia Association of Non-Profit Homes for the Aging (VANHA), the Virginia Association for Home Care (VAHC), the Virginia Hospital and Healthcare Association (VHHA), and the Medical Society of Virginia. The VHCA commented and also transmitted comments from VANHA and VAHC. The VHCA also provided the draft regulations to two provider attorneys and two provider accountants. DMAS also met with the VHCA to discuss its comments.

## Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 include a sentence to that effect.*

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These regulations will help DMAS process providers' appeals more quickly. This will benefit the taxpayers because issues under dispute will be resolved more promptly than in the past, and will result in quicker repayment of overpayments, should any be due. Providers specifically requested this legislation from the 2000 General Assembly and, therefore, are supportive of DMAS efforts in this area. Therefore, DMAS anticipates provider support in implementing this proposed change.

## Public Comment

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

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DMAS' proposed regulations were published in the February 26, 2001, Virginia Register for their comment period from February 26, 2001, until April 27, 2001. Comments were received from one individual on the letterhead of American HealthCare, LLC. A summary of the comments received and the agency's response follows:

American HealthCare, LLC: The commenter suggested that cross references to the appeal regulations should be added to 12 VAC 30-70-140 and to 12 VAC 30-90-130. Such a cross reference would give inpatient hospitals and nursing homes references in their respective payment systems to the new appeal process. In a second letter, the commenter noted that it is imperative that Medicaid reimbursement regulations be cited in the case summary so that it is

clear what regulatory basis DMAS has at issue. Additionally, the commenter noted that with specific quotes and explanations of adjustments at the exit conference time, both the providers and the audit team would have a clearer understanding of the issues to be discussed and could potentially reduce the number of appeals. The commenter also noted that the provider should be able to obtain a copy of the recording made at the time of the informal hearing. If that is not possible, the provider should be able to make their own recording or request a court reporter.

Agency response:

The Department agrees with the suggestion that cross references be added to the regulations dealing with inpatient hospitals and nursing homes.

The regulations already require that the Department's case summary, which is submitted once the appeal request is received, address each adjustment and state DMAS' position for each adjustment. The regulations also already require that the case summary contain the factual basis for each adjustment and any other information, authority, or documentation the Department relied upon in making its adjustment. Because the regulations address appeals, the regulations cannot specify what must happen at the exit conference, which is prior to the appeal process.

With regard to the parties tape recording the informal fact finding conference or having a court reporter present, this does not comport with the function of the informal fact finding conference. The informal fact finding conference is the first level of the appeal process, and the formal hearing is the second level of the appeal process, from which a provider can appeal to court for judicial review. The formal hearing is a de novo hearing that is also the record for court review. As a de novo hearing, it would not be appropriate at the formal hearing to use comments made at the informal fact finding conference, and as the record for court review, the formal hearing is transcribed by a court reporter. The informal fact finding conference, by contrast, is the first time that the parties have had an opportunity to sit down together to try to resolve issues. It is not intended to be an adversarial or an evidentiary proceeding, and that is why the informal fact finding conference is only recorded for the convenience of the informal appeals agent and is not made part of the administrative record and is not made available to either the provider or the Department representatives.

### Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

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The entire regulation is new text and does not substantially vary from current emergency regulations.

### Family Impact Statement

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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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This regulatory action will not have any negative or positive effects on the institution of the family or family stability. It will not increase or decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, or the assumption of family responsibilities because this action applies to providers' abilities to appeal decisions.