



## Virginia Department of Planning and Budget **Economic Impact Analysis**

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### **12 VAC 30-10 State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions**

**Department of Medical Assistance Services**

**Town Hall Action/Stage: 5164 / 8746**

June 23, 2021

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### **Summary of the Proposed Amendments to Regulation**

The director of the Department of Medical Assistance Services (DMAS), on behalf of the Board of Medical Assistance Services, proposes to promulgate a permanent regulation to replace an emergency regulation that went into effect on September 19, 2019. As with the emergency regulation, the permanent regulation would incorporate the changes that were made to the Virginia State Plan in order to implement the Medicaid expansion that became effective on January 1, 2019.

### **Background**

The proposed regulation is part of the overall implementation process for Medicaid expansion in accordance with several legislative mandates: the 2018 Acts of Assembly, Chapter 2, Item 303.SS.4(a)(1); the 2019 Acts of Assembly, Chapter 854, Item 303.SS.4(a)(1); the 2020 Acts of Assembly, Chapter 1289, Item 313.QQ.3(a)(1); and the 2021 Special Session 1 Acts of Assembly, Chapter 552, Item 313.QQ.3(a)(1). These mandates direct DMAS to “amend the State Plan for Medical Assistance under Title XIX of the Social Security Act, and any waivers thereof, to implement coverage for newly eligible individuals pursuant to 42 U.S.C. § 1396d(y)(1)[2010] of the Patient Protection and Affordable Care Act.”

The State Plan Amendments have already been made and approved by the federal Centers for Medicare and Medicaid Services, and emergency regulations were subsequently adopted. This action permanently replaces several key elements of the regulation that effectuated the expansion. More specifically, the regulatory provisions being permanently adopted by this action include: incorporation of the new adult eligibility group as a group eligible for Medicaid

coverage; incorporation of expansion-related changes to the federal medical assistance percentage; incorporation of the federal medical assistance percentage for expenditures associated with new enrollees; and clarification of the language for the Health Insurance Premium Payment (HIPP) program and the HIPP for Kids program.

### **Estimated Benefits and Costs**

According to DMAS, the primary effect of the proposed changes would be consistency between the Medicaid State Plan and the Virginia Administrative Code (VAC). It has long been a practice to amend the regulation to mirror the changes that were previously made to the Medicaid State Plan. In that sense, this regulatory action is a housekeeping measure. Under the General Assembly's multiple directives stated above, the expansion of Medicaid coverage to indigent adults addressed in this regulation has already been in effect for more than two years.

As explained in the economic impact analysis for a separate regulatory action<sup>1</sup>, the Medicaid expansion is completely funded by the provider coverage assessment and the payment rate assessment (both of which are non-state funding sources), plus the corresponding federal match. These funding sources made the coverage of indigent adults possible. According to DMAS, there are 400,000 Virginians estimated to be eligible under Medicaid expansion. More than 327,000 members are enrolled in expansion as of November 1, 2019, and more than 375,000 members have been enrolled at some point since the beginning of the Medicaid expansion.

Although permanently amending the Virginia Administrative Code to reflect what has already been implemented will not create any immediate economic impact, the practice still has value. The legislation has addressed important aspects of expansion in a piecemeal fashion. And though the State Plan stitched these directives together, its purpose is to provide a basis for federal authority. In contrast, the VAC is the basis for the state authority. To the extent that the proposed amendments help serve as a comprehensive repository for the General Assembly's multiple directives regarding expansion, the proposal should benefit Medicaid providers, recipients, and the public in general.

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<sup>1</sup> [https://townhall.virginia.gov/L/GetFile.cfm?File=64\5100\8442\EIA\\_DMAS\\_8442\\_v1.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=64\5100\8442\EIA_DMAS_8442_v1.pdf)

## **Businesses and Other Entities Affected**

The proposed amendments should benefit Medicaid providers, recipients, and the public in general in terms of providing a comprehensive and permanent source for the rules governing expansion population as envisioned by the General Assembly. No adverse economic impact<sup>2</sup> on any entity is indicated.

### **Small Businesses<sup>3</sup> Affected:**

The proposed amendments do not adversely affect small businesses.

### **Localities<sup>4</sup> Affected<sup>5</sup>**

The proposed amendments do not introduce costs for local governments.

## **Projected Impact on Employment**

The proposed amendments do not affect total employment.

## **Effects on the Use and Value of Private Property**

No effects on the use and value of private property or real estate development costs is expected.

## **Legal Mandates**

**General:** The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

**Adverse impacts:** Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject

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<sup>2</sup> Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

<sup>3</sup> Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

<sup>4</sup> “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>5</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.