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MEMORANDUM

TO: **EMILY MCCLELLAN**
Regulatory Supervisor
Department of Medical Assistance Services

FROM: **JENNIFER L. GOBBLE**
Assistant Attorney General

DATE: **July 16, 2019**

SUBJECT: **Emergency Regulations**
Medicaid Expansion: Hospital Presumptive Eligibility

I have reviewed the attached emergency regulations that would add the new expansion adult group to the list of eligibility groups that qualified hospitals must consider for presumptive Medicaid eligibility. The changes in the attached emergency regulations are part of the implementation of Medicaid expansion in accordance with the directive in the 2018 *Acts of Assembly*, Chapter 2, Item 303.SS.4(a), to "amend the State Plan for Medical Assistance under Title XIX of the Social Security Act, . . . 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." Item 303.SS.4(f) provides that DMAS shall have authority to promulgate emergency regulations to implement the expansion-related changes. The amendments reflected in this regulatory action have been approved by the Centers for Medicare and Medicaid Services in a State Plan Amendment.

Based on my review, it is this Office's view that the Director of the Department of Medical Assistance Services, acting on behalf of the Board of Medical Assistance Services pursuant to Virginia Code § 32.1-324, has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Virginia Administrative Process Act (VAPA), and has not exceeded that authority.

The authority for this emergency action is found in Virginia Code § 2.2-4011(B), which provides that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment and the

regulation is not exempt under the provisions of subdivision A.4 of Virginia Code § 2.2-4006.

Pursuant to Virginia Code § 2.2-4012, the attached emergency regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations. In addition, the emergency regulations shall be effective for no more than 18 months. If the Department intends to continue regulating the subject matter governed by these emergency regulations beyond 18 months, it will be necessary to replace these emergency regulations with regulations promulgated in accordance with Article 2 of the VAPA. A Notice of Intended Regulatory Action relating to the proposed replacement regulations must be filed with the Registrar within 60 days of the effective date of the emergency regulations. The proposed replacement regulations must be filed with the Registrar within 180 days after the effective date of the emergency regulations. Va. Code § 2.2-4011(C).

If you have any questions or need any additional information, please feel free to contact me at 786-4905.

cc: Kim F. Piner
Senior Assistant Attorney General

Action:
Medicaid Expansion: Hospital Presumptive Eligibility
Stage: Emergency/NOIRA
7/15/19 3:13 PM [latest]

12VAC30-30-70. Hospital presumptive eligibility.

A. Qualified hospitals shall administer presumptive eligibility in accordance with the provisions of this section. A qualified hospital is a hospital that meets the requirements of 42 CFR 435.1110(b) and that:

1. Has entered into a valid provider agreement with DMAS, participates as a Virginia Medicaid provider, notifies DMAS of its election to make presumptive eligibility determinations, and agrees to make presumptive eligibility determinations consistent with DMAS policies and procedures; and

2. Has not been disqualified by DMAS for failure to make presumptive eligibility determinations in accordance with applicable state policies and procedures as defined in subsections C, D, and E of this section or for failure to meet any standards established by the Medicaid agency.

B. The eligibility groups or populations for which hospitals determine eligibility presumptively are: (i) pregnant women; (ii) infants and children younger than age 19 years; (iii) parents and other caretaker relatives; (iv) individuals eligible for family planning services; (v) former foster care children; ~~and~~ (vi) individuals needing treatment for breast and cervical cancer; and (vii) adults age 19 or older and under age 65.

C. The presumptive eligibility determination shall be based on:

1. The individual's categorical or nonfinancial eligibility for the group, as listed in subsection B of this section, for which the individual's presumptive eligibility is being determined;

2. Household income shall not exceed the applicable income standard for the group, as the groups are listed in subsection B of this section, for which the individual's presumptive eligibility is being determined if an income standard is applicable for this group;

3. Virginia residency; and

4. Satisfactory immigration status in accordance with 42 CFR 435.1102 (d)(1) and as required in 12VAC30-40-10.3 and 42 CFR 435.406.

D. Qualified hospitals shall ensure that at least 85% of individuals deemed by the hospital to be presumptively eligible will file a full Medicaid application before the end of the presumptive eligibility period.

E. Qualified hospitals shall ensure that at least 70% of individuals deemed by the hospital to be presumptively eligible are determined eligible for Medicaid based on the full application that is submitted before the end of the presumptive eligibility period.

F. The presumptive eligibility period is determined in accordance with 42 CFR 435.1101, and shall begin on the date the presumptive eligibility determination is made. The presumptive eligibility period shall end on the earlier of:

1. The date the eligibility determination for regular Medicaid is made if an application for Medicaid is filed by the last day of the month following the month in which the determination of presumptive eligibility is made; or

2. The last day of the month following the month in which the determination of presumptive eligibility is made if no application for Medicaid is filed by last day of the month following the month in which the determination of presumptive eligibility is made.

G. Periods of presumptive eligibility are limited to one presumptive eligibility period per pregnancy and one per calendar year for all other covered groups.