



COMMONWEALTH of VIRGINIA
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MEMORANDUM

TO: EMILY MCCLELLAN
Regulatory Supervisor
Department of Medical Assistance Services

FROM: JENNIFER L. GOBBLE
Assistant Attorney General

DATE: February 26, 2021

SUBJECT: Fast-Track Regulations (5203 / 8801)
Medicaid Expansion: Hospital Presumptive Eligibility

I have reviewed the attached regulations that would add the new Medicaid expansion adult group to the list of eligibility groups that qualified hospitals must consider for presumptive Medicaid eligibility. The regulations are part of the overall implementation process for Medicaid expansion in accordance with directives in 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), and the 2020 *Acts of Assembly*, Chapter 1289, Item 313.QQ.3(a)(1), 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.” It is my understanding that the amendments reflected in the regulations have been approved by the Centers for Medicare and Medicaid Services in a State Plan Amendment.

Based on my review, it is my view that the agency Director, 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, and has not exceeded that authority.

Please be aware that this review is based solely upon whether DMAS has the legal authority to promulgate these regulations, not the appropriateness of whether they should be

promulgated pursuant to the fast-track process. Pursuant to Virginia Code § 2.2-4012.1, if an objection to the use of the fast-track process is received within the 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 Department of Medical Assistance Services shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process set out in this article with the initial publication of the Fast-Track regulations serving as the Notice of Intended Regulatory Action.

If you have any questions or need any additional information, please feel free to contact me at 786-2071.

cc: Kim F. Piner
Senior Assistant Attorney General/Section Chief

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~~ the Department of Medical Assistance Services (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 19 years of age or older but younger than 65 years of age.

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 subdivision 3 of 12VAC30-40-10 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.
