



Virginia  
Regulatory  
Town Hall

**Exempt Action Final Regulation  
Agency Background Document**

<b>Agency Name:</b>	Dept. of Medical Assistance Services (12 VAC 30)
<b>VAC Chapter Number:</b>	Chapters 50, 60, and 130
<b>Regulation Title:</b>	Amount, Duration and Scope of Medical and Remedial Care and Services and Standards Established and Methods Used to Assure High Quality Care
<b>Action Title:</b>	Homebound Criterion and Other Technical Changes
<b>Date:</b>	January 8, 2002; Effective February 27, 2002

Where an agency or regulation is exempt in part or in whole from the requirements of the Administrative Process Act (§ 9-6.14:1 *et seq.* of the *Code of Virginia*) (APA), the agency may provide information pertaining to the action to be included on the Regulatory Town Hall. The agency must still comply the requirements of the Virginia Register Act (§ 9-6.18 *et seq.* of the *Code of Virginia*) and file with the Registrar and publish their regulations in a style and format conforming with the *Virginia Register Form, Style and Procedure Manual*. The agency must also comply with Executive Order Fifty-Eight (99) which requires an assessment of the regulation's impact on the institution of the family and family stability.

This agency background document may be used for actions exempt pursuant to § 9-6.14:4.1(C) at the final stage. Note that agency actions exempt pursuant to § 9-6.14:4.1(C) of the APA do not require filing with the Registrar at the proposed stage.

In addition, agency actions exempt pursuant to § 9-6.14:4.1(B) of the APA are not subject to the requirements of the Virginia Register Act (§ 9-6.18 *et seq.* of the *Code of Virginia*) and therefore are not subject to publication. Please refer to the *Virginia Register Form, Style and Procedure Manual* for more information.

**Summary**

*Please provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation, instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This regulatory action makes certain additions and deletions to the *Virginia Administrative Code* (VAC) to reflect required changes in order for the VAC to conform to federal and state law. The first change deletes the requirement that recipients meet the homebound criterion in order to qualify for home based health care services. The second action involves changing the requirement that a physician must review, sign, and date a recipient’s plan of care from every 62 days to every 60 days as specified in 42 CFR 440.70. The third change will move the Durable Medical Equipment (DME) language from the Home Health section of the VAC to a new section of the VAC. There is no substantive change being made to the relocated regulations. The fourth change reflects a state legislative action in which physical therapists are no longer licensed by the Virginia Board of Medicine. This licensing authority was placed with the legislatively established Board of Physical Therapy.

The VAC sections affected by this regulatory action are 12 VAC 30-60-70 (Attachment 3.1C), 12 VAC 30-50-160 (Attachment 3.1 A&B), and 12 VAC 30-130-20. Additionally, two new sections, 12 VAC 30-50-165 and 12 VAC 30-60-75, will be added to the VAC.

**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. Because this final regulation is exempt from the public notice and comment requirements of the Administrative Process Act (Code 9-6.14:4.1 C), the Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1/8/2002

/s/ Eric S. Bell

Date

Eric S. Bell, Director

Department of Medical Assistance Services

**Additional Information**

*Please indicate that the text of the proposed regulation, the reporting forms the agency intends to incorporate or use in administering the proposed regulation, a copy of any documents to be incorporated by reference are attached.*

*Please state that the Office of the Attorney General (OAG) has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law. Note that the OAG's certification is not required for Marine Resources Commission regulations.*

*If the exemption claimed falls under § 9-6.14:4.1(C) (4)(c) of the APA please include the federal law or regulations being relied upon for the final agency action.*

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The sections of the State Plan affected by this action are the Amount, Duration, and Scope of Medical and Remedial Care and Services (12 VAC 30-50, Attachment 3.1 A&B), Standards Established and Methods Used to Assure High Quality of Care (12 VAC 30-60, Attachment 3.1C), and Amount, Duration and Scope of Selected Services (12 VAC 30-130).

Homebound Criteria and Exceptions (12 VAC 30-60-70 and 12 VAC 30-50-160):

Currently 12 VAC 30, Chapter 60, states that a recipient must be essentially homebound or meet one of the exception criteria in order to receive Medicaid home health services. The current regulation sets forth the homebound criterion, as well as the exception criteria that must be met in order for services to be reimbursed by Medicaid. The CMS State Medicaid Director Letter-Olmstead Update Number Three dated July 25, 2000, states that it is not necessary for a recipient to meet a homebound criterion in order for services to be covered under the Medicaid home health benefit. The letter states that the homebound requirement is a Medicare requirement that does not apply to the Medicaid program. The letter further states that imposing a homebound requirement violates Medicaid regulations related to "amount, duration, and scope of services" at 42 CFR 440.230 and "comparability of services" at 42 CFR 440.240.

The Virginia Association for Home Care, the home health industry association, has questioned the Agency about the current policy of requiring recipients to meet the homebound status criteria and expressed knowledge of the Centers for Medicare and Medicaid Services (CMS) interpretation. This action will conform the VAC to CMS's interpretations.

In fiscal year 1999, 6,374 recipients were served in the home health program. The total expenditures for fiscal year 1999 were \$7,051,662. In fiscal year 2000, 6,031 recipients were served in the home health program with the expenditures totaling \$6,707,635. In fiscal year 2001, 5,019 recipients were served in the home health program with the expenditures totaling \$5,313,998. Currently, there are 186 providers enrolled in the Virginia Medicaid program as home health providers who may be affected by these regulations.

Physician Review Requirements (12 VAC 30-60-70):

The second action in this regulatory package concerns the timeframe for the physician review of the plan of care. This regulatory action will change the current requirement that a physician review, sign, and date a recipient's plan of care from every 62 days to 60 days. This timeframe is a federal requirement specified in 42 CFR 440.70. This two-day change is not expected to adversely affect providers.

Durable Medical Equipment (12 VAC 30-50-160, 12 VAC 30-50-165, 12 VAC 30-60-70, and 12 VAC 30-60-75):

The third change under this regulatory action will move existing durable medical equipment text from the home health section of the VAC to a new independent section of the VAC. There is no change in content of this text. It is being moved to make the information more readily accessible to the public. The new text will be located at 12 VAC 30-60-75.

Virginia Board of Physical Therapists (12 VAC 30-130-20 and 12 VAC 30-60-70):

The Virginia General Assembly created the Board of Physical Therapy during the 2001 session. One of the duties of this legislatively created Board is to serve as the licensing entity for physical therapists within the Commonwealth. In the past, the Virginia Board of Medicine was the licensing entity for physical therapists. This action will delete the Board of Medicine as the licensing authority and replace it with the Virginia Board of Physical Therapy in several sections of the VAC to reflect this legislative change.

### 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.*

This regulatory action will not have any negative effects on the institution of the family or family stability. It will not increase nor decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, or the assumption of family responsibilities.