



# COMMONWEALTH of VIRGINIA

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## MEMORANDUM

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

**FROM:** USHA KODURU *Uk*  
Assistant Attorney General

**DATE:** February 15, 2017

**SUBJECT:** 12 VAC 30-20-570 Proposed Regulation for the Reconsideration of Final Agency Decisions (Action 4610 / Stage 7827)

I have reviewed the attached proposed regulation establishing a process by which appellants can petition the DMAS Director to reconsider a Final Agency Decision. Based on that review, it is my view that the Director, acting on behalf of the Board pursuant to Virginia Code § 32.1-325, has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

Virginia Code § 32.1-325 grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance, and §§ 32.1-324 and 325 grant the authority to the Director to administer the Plan according to the Board's requirements. Additionally, Section 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] (the *Act*) provides governing authority for payment for Medicaid services. In addition, the 2016 Virginia Acts of Assembly, Chapter 694 created a new section of the Virginia Administrative Process Act, which authorized DMAS to promulgate regulations that specify the scope of the reconsideration review. This regulation will amend the State Plan; therefore, approval by the Centers for Medicare and Medicaid Services also will be required.

Emily McClellan  
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If you have any additional questions, please contact me at 786-4074.

cc: Kim F. Piner, Esquire

Attachment

### Proposed Text

Action:  
Reconsideration of Final Agency Decision  
Stage: Proposed  
1/26/17 10:50 AM

**12VAC30-20-570. Reconsideration of final agency decision.**

A. Reconsiderations of a DMAS final appeal decision issued on a formal appeal conducted pursuant to § 2.2-4020 of the Code of Virginia shall be conducted in accordance with § 2.2-4023.1 of the Code of Virginia.

B. The DMAS director's review shall be made upon the case record of the formal appeal. Testimony or documentary submissions that were not part of the formal appeal case record prior to issuance of the final agency decision shall not be considered.