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Proposed Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-20-570
Regulation title(s)	Reconsideration of Final Agency Decision
Action title	Reconsideration of Final Agency Decision
Date this document prepared	February 13, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This proposed stage regulatory action follows an emergency regulation that was authorized by action of the 2016 Virginia General Assembly in enacting *Code of Virginia* §2.2-4023.1. That Code section provides for establishment of a reconsideration process by which appellants can petition the agency director to reconsider the agency's Final Agency Decision made pursuant to the *Code of Virginia* §2.2-4020. The statute specifically authorized the agency to promulgate regulations to specify the scope of the reconsideration review, and this regulation specifies the scope of review.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

DMAS = Department of Medical Assistance Services

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

In addition, the 2016 Virginia *Acts of Assembly* Chapter 694 created a new section of the Virginia Administrative Process Act which provides for a process by which appellants may petition an agency to reconsider its final case decision, and specifically authorized the agency to promulgate emergency regulations that specify the scope of that reconsideration review.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The 2016 Virginia Acts of Assembly Chapter 694 created a new section of the Virginia Administrative Process Act, *Code of Virginia* §2.2-4023.1, which provides for a process by which appellants may petition an agency to reconsider its final case decision made pursuant to Va. Code §2.2-4020. The Chapter further specifically authorizes the agency to promulgate regulations that specify the scope of that reconsideration review. DMAS promulgated an emergency regulation, and this proposed stage seeks to make those changes permanent. The regulation creates 12 VAC 30-20-570, which is needed to accomplish the goal of establishing and defining the scope of review for reconsiderations conducted in accordance with *Code of Virginia* §2.2-4023.1.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.

Prior to the newly enacted *Code of Virginia* §2.2-4023.1 by the Virginia Acts of Assembly – 2016 Session, Chapter 694, there was no process by which an appellant could petition the agency director to reconsider a final agency case decision made pursuant to *Code of Virginia* §2.2-4020.

Virginia Acts of Assembly – 2016 Session, Chapter 694, in enacting *Code of Virginia* §2.2-4023.1, provided a procedural timeline for the reconsideration process, but authorized the agency to enact emergency regulations to define the scope of the reconsideration review.

Both the emergency regulation and the current proposed stage regulation specify the scope of the reconsideration review, as authorized by the 2016 General Assembly in enacting *Code of Virginia* §2.2-4023.1. The scope of review shall be upon the record of the case decision made pursuant to *Code of Virginia* §2.2-4020. The reconsideration shall not authorize the reopening of the formal administrative hearing or acceptance of evidence or testimony not part of the record of the case, consistent with *1st Stop Health Services v. DMAS 63 Va. App. 266, 756 S.E.2d 183 (2014)*.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage of this regulation is that it will permit DMAS to comply with a legislative mandate. This regulation does not create any disadvantages to the public, the agency, or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements in this regulation that are more restrictive than applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities will be particularly affected, as this regulation will apply statewide.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the [insert either: Board or agency] is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Emily McClellan, DMAS, 600 E. Broad Street, Richmond, VA 23219, Emily.McClellan@dmas.virginia.gov; or fax: 804-786-1680. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures	There is no cost associated with these regulatory changes.
Projected cost of the new regulations or changes to existing regulations on localities.	There is no cost to localities as a result of these regulatory changes.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	These regulatory changes provide guidance on the scope of the review for reconsideration of a DMAS final decision. The changes will only affect individuals who file a petition for reconsideration of a final decision.
Agency's best estimate of the number of such	Approximately 60 final agency decisions are

<p>entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <p>a) is independently owned and operated and;</p> <p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>issued each year. It is expected that not all individuals will petition for reconsideration.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including:</p> <p>a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</p> <p>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There are no costs to small businesses, and no costs associated with the development of real estate.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The regulation is designed to provide guidance to individuals on the scope of review involved in the reconsideration of a final agency decision.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

No alternatives would meet the requirements of the legislative mandate.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

This regulatory action does not establish any compliance or reporting requirements or performance standards for small businesses.

Family Impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; nor 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. It does not strengthen or erode the marital commitment, and does not increase or decrease disposable family income.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

No comments were submitted during the NOIRA public comment period.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the pre-emergency regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
12 VAC 30-20-570	Specifies that the scope of the review shall be upon the record of the agency case decision made pursuant to <i>Code of Virginia</i> §2.2-4020.	This section follows 12 VAC 20-30-560 which specifies the agency’s process and timeline for formal administrative appeals pursuant to <i>Code of Virginia</i> §2.2-4020.	The intent in paragraph A is to adopt the process and timeline for agency reconsideration of final case decisions made pursuant to <i>Code of Virginia</i> §2.2-4020, as mandated in the recently enacted <i>Code of Virginia</i> §2.2-4023.1. The intent of paragraph B is to specify the scope of the reconsideration review, as authorized by <i>Code of Virginia</i>

			<p>§2.2-4023.1</p> <p>The impact is likely to allow for a timely review and decision by the director after careful consideration of the appellant's petition and the record of the case.</p>
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There are no changes in the regulatory text between the emergency regulation and the proposed stage regulation.