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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Department of Medical Assistance Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	12VAC30-10-410
<b>VAC Chapter title(s)</b>	State Plan under Title XIX of the Social Security Act Medical Assistance Program; General Provisions
<b>Action title</b>	State-Based Exchange
<b>Date this document prepared</b>	May 15, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

In 2020, the Virginia General Assembly passed legislation that created the Health Benefit Exchange Division within the State Corporation Commission to oversee Virginia's transition to a State Based Exchange (SBE) (also referred to as the Virginia Health Benefit Exchange). The SBE went live in November 2023. Now that the SBE is operational, the Health and Human Services appeals entity within the Federally Facilitated Exchange is no longer involved in conducting Medicaid fair hearings with respect to eligibility based on applicable modified adjusted gross income (MAGI). DMAS conducts all *de novo* fair hearings, regardless of whether or not they pertain to eligibility based on MAGI.

DMAS submitted a state plan amendment (SPA) to the Centers for Medicare & Medicaid Services (CMS) that included the fair hearing changes. The SPA was approved on August 7, 2023, and this regulatory action incorporates the changes in the Virginia Administrative Code.

**Acronyms and Definitions**

*Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.*

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- CMS – Centers for Medicare and Medicaid Services
- DMAS – Department of Medical Assistance Services
- MAGI - Modified Adjusted Gross Income
- SBE – State-Based Exchange

**Statement of Final Agency Action**

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

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On May 15, 2024, the Department of Medical Assistance Services adopted final amendments to “State Based Exchange.”

**Mandate and Impetus**

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

*Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.*

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The Code of Virginia § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations. The Code of Virginia § 32.1-324, grants the Director of the Department of Medical Assistance Services the authority of the Board when it is not in session.

This regulatory action will amend language in the Virginia Administrative Code to outline which entity is responsible for fair hearings related to eligibility based on applicable MAGI now that Virginia has transitioned from the Federally Facilitated Marketplace to the Virginia SBE.

This rulemaking is expected to be non-controversial because moving to a SBE was legislatively mandated and was approved by CMS. Furthermore, DMAS has an established Appeals Division

to hear all cases in accordance with state and federal regulations to provide appellants with full due process of law.

### Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

The Code of Virginia § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations. The Code of Virginia § 32.1-324, grants the Director of the Department of Medical Assistance Services the authority of the Board when it is not in session.

### Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

This regulatory action is being conducted to amend language in the Virginia Administrative Code to outline which entity is responsible for fair hearings related to eligibility based on applicable MAGI now that Virginia has transitioned to an SBE.

### Substance

*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.*

In 2020, the Virginia General Assembly passed legislation that created the Health Benefit Exchange Division within the State Corporation Commission to oversee Virginia's transition to a State Based Exchange (SBE) (also referred to as the Virginia Health Benefit Exchange). The SBE went live in November 2023. Now that the SBE is operational, the Health and Human Services appeals entity within the Federally Facilitated Exchange is no longer involved in conducting Medicaid fair hearings with respect to eligibility based on applicable MAGI. DMAS conducts all *de novo* fair hearings, regardless of whether or not they pertain to eligibility based on MAGI.

### Issues

*Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

These changes create no disadvantages to the public and the Commonwealth.

The advantages of these changes to the public and the Commonwealth are that these changes align DMAS regulations with state requirements. Another advantage of the SBE is that the state has more control over their insurance marketplace operations and can tailor their programs to meet the needs of their state’s population, which may lead to greater efficiencies. DMAS has an established Appeals Division to allow individuals to contest adverse actions regarding Medicaid taken by any entity, which now includes the SBE. No changes are being made to the DMAS appeal process itself.

**Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

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

**Agencies, Localities, and Other Entities Particularly Affected**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

No state agencies, localities, or other entities are particularly affected by this change.

**Economic Impact**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail;</i></p>	<p>None.</p>
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b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	None.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	This regulatory action will amend the language in the Virginia Administrative Code to specify that the Medicaid Agency is responsible for all Medicaid fair hearings related to eligibility now that the Virginia SBE has been implemented.

**Impact on Localities**

Projected costs, savings, fees or revenues resulting from the regulatory change.	None.
Benefits the regulatory change is designed to produce.	This regulatory action will amend the language in the Virginia Administrative Code to specify that the Medicaid Agency is responsible for all Medicaid fair hearings related to eligibility now that the Virginia SBE has been implemented.

**Impact on Other Entities**

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	None.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	None.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	None.
Benefits the regulatory change is designed to produce.	This regulatory action will amend the language in the Virginia Administrative Code to specify which entity will be responsible for fair hearings related

	to eligibility now that the Virginia SBE has been implemented.
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**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

No alternatives can achieve the purpose of this regulatory repeal.

**Regulatory Flexibility Analysis**

*Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.*

This regulatory action is not expected to affect small businesses.

**Public Participation**

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

*Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day 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 agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

DMAS is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Meredith Lee, DMAS, 600 E. Broad Street, Richmond, VA 23219, [Meredith.Lee@dmass.virginia.gov](mailto:Meredith.Lee@dmass.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

**Detail of Changes**

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
12 VAC 30-10-410		Indicates that DMAS and the Health and Human Services appeals entity within the federal Exchange will handle fair hearings with respect to eligibility based on applicable MAGI.	Text changes made to remove reference to the Health and Human Services appeals entity.