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Fast Track Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12VAC30, Chapter 110
Regulation title	Eligibility and Appeals
Action title	Revisions to Appeals Regulations as a Result of a Periodic Review
Document preparation date	January 5, 2006

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apr.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The Department of Medical Assistance Services (DMAS) recently conducted a periodic review of its appeals regulations. During this review the Agency determined that certain federal due process requirements that DMAS follows are not reflected in the appeals regulations. This action brings the description of the appeals process in line with both DMAS appeals practice and federal requirements. This action will also allow DMAS to achieve greater clarity to the regulations, clarify current Appeals Division procedures, and correct grammatical errors in the regulations that were noticed during the review.

Statement of agency final action

Please 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.

I hereby approve the foregoing Agency Background Document with the attached amended regulations (Revisions to Appeals Regulations as a Result of a Periodic Review) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act and is full, true, and correctly dated.

Date

Patrick W. Finnerty, Director
Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

The Code of Virginia (1950) as amended, section 32.1-325, grants to the Board of Medical Assistance Services the authority to administer the Plan for Medical Assistance. The Code of Virginia (1950) as amended, section 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 was established by § 1902 (a) of the Social Security Act [42 U.S.C. 1396a], which provides the governing authority for DMAS to administer the State's Medicaid system.

The Code of Federal Regulations (CFR), 42 CFR 431, Subpart E, contains the procedural safeguards to which DMAS must adhere when conducting hearings of applicants or recipients. Section 2.2-4017 of the Administrative Process Act and the Governor's Executive Order 21 (2002) provide for periodic review of regulations.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this regulatory action is threefold:

1. To reflect the appeals procedures currently in use and conform the descriptions of these procedures to federal requirements.
2. To clarify current Appeals Division procedures; and
3. To correct grammatical errors in the regulations.

This action is the result of a recent periodic review of these regulations.

Rationale for using fast track process

DMAS is proposing this action as a fast track action as the most expedient way to address discrepancies between current appeals practice and the description of those practices in DMAS appeals regulations. In addition to complying with the federal regulations, this action will also allow DMAS to clarify regulatory language and correct grammatical errors noticed during a periodic review. DMAS does not definitively expect objections to this proposed action.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

While conducting a periodic review of the appeals regulations, DMAS became aware that the Agency's appeal regulations did not fully and accurately reflect the procedural safeguards described in the Code of Federal Regulations. Although in practice DMAS currently provides all federally required fair hearing procedures, the regulations currently in place do not reflect all of these procedures. These amended regulations conform DMAS appeals regulations with the Agency's appeals practice.

Specifically, DMAS is amending 12VAC30-110-90 (Right to appeal) to reflect the fact that appeal rights are available when DMAS attempts to recover Medicaid payments from a deceased Medicaid recipient's estate, when DMAS seeks to recover Medicaid payments made on behalf of an individual ineligible for Medicaid, and when DMAS seeks to recover Medicaid payments made on behalf of an individual whose Medicaid coverage was continued during an appeal. DMAS is also expanding the description of appeal rights for services denied to include not simply denial, but also where services are suspended, reduced or terminated.

In addition, the Agency is amending 12VAC30-110-370 (Final decision) to reflect the fact that all final decisions shall include a deadline by which the recipient of the decision must take action in order to appeal the decision, and a notation that the decision is final. Additionally, this action clarifies current Appeals Division procedures and corrects grammatical errors.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

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	None
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	Medicaid applicants and recipients, although they already <u>had</u> the aforementioned rights. However, the regulations did not reflect them.
Agency’s best estimate of the number of such 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 (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	None
Projected cost of the regulation for affected individuals, businesses, or other entities	None

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.

There are no viable alternatives. DMAS appeal regulations must accurately reflect both the Agency’s appeal procedures and federal appeal requirements. Finally, the grammatical and clarifying changes made were essential to a clear understanding of the procedures described in the regulations.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

This regulatory action will not have any negative effects on the institution of the family or family stability. It will not increase or decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, or the assumption of family responsibilities. The action will continue to allow Medicaid applicants and recipients fair hearings.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-110-90 (1)		"An application for State Local Hospitalization"	"An application for State and Local Hospitalization" ("and" is added because it was previously inadvertently omitted)
12VAC30-110-90 (2)		"Which will adversely affect"	"That will adversely affect" (corrects grammatical error)
12VAC30-110-90 (3)		"Service is denied"	"Service is denied, suspended, reduced, or terminated" (states additional reasons a recipient or applicant can appeal; this was already occurring but just not in the regulation)
12VAC30-110-90 (4)		"The agency does not act"	"The agency fails to take an application and/or fails to act" (clarifies procedure)
	12VAC30-110-90 (5)		The agency takes action or proposes to take action regarding the recovery of applicable medical assistance payments from a decedent's estate. (states an additional reason a recipient or applicant can appeal; this was

			already occurring but just not in the regulation)
	12VAC30-110-90 (6)		The agency takes action or proposes to take action regarding the recovery of expenditures for services received by ineligible individuals. (states an additional reason a recipient or applicant can appeal; this was already occurring but just not in the regulation)
	12VAC30-110-90 (7)		The agency takes action or proposes to take action regarding the recovery of expenditures paid on behalf of individuals whose coverage was continued during the appeals process. (states an additional reason a recipient or applicant can appeal; this was already occurring but just not in the regulation.)
12VAC30-110-370(2) and (3)		"which"	"that" (corrected grammatical error)
	12VAC30-110-370 (6)		Adds that the final decision after a hearing includes the deadline date by which further action must be taken. (already occurring but was not in the regulation.)
12VAC30-110-370 (7)		"The notice shall state that a final decision"	"A cover letter stating what the hearing officer's decision is, and stating that the final decision" (clarifies procedure)