



Proposed Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12 VAC 30, Chapter 10 and 20
Regulation title	State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions; Administration of Medical Assistance Services
Action title	Estate Recovery Update
Date this document prepared	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

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

The proposed regulation changes are to update and clarify the current regulations regarding Medicaid Estate Recovery carried out by the Department of Medical Assistance Services (DMAS). This regulatory action will more closely reflect current Agency practice based upon language provided by the federal Medicaid agency, the Centers for Medicare and Medicaid Services (CMS) in its guidance document publication entitled the State Medicaid Manual. This change repeals 12 VAC 30-20-140 (Estate Recoveries) in order to re-promulgate this section in a restructured and revised format as 12 VAC 30-20-141. This regulatory action will add new definitions, for “Cost effective” and “Homestead of modest value”. The definitions for “Estate” and “Applicable medical payments,” will be deleted from 12 VAC 30-10-560 and moved into the new regulation section 12 VAC 30-20-141. This revision will also include the exemption from Medicaid Estate recovery for American Indian/Alaska Native (AI/AN) income, resources and property as defined in the federal State Medicaid Manual. Consistent with the State Medicaid Manual, assets or resources that were disregarded due to an authorized State Long-Term Medicaid Insurance Partnership policy are being exempted from estate recovery actions.

Legal basis

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

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.

The Medicaid Estate Recovery program was mandated by the federal Omnibus Budget Reconciliation Act of 1993, as codified at 42 U.S.C. § 1396p(b)(1)(B) of the *Social Security Act* [42 USC 1396p], which requires the Commonwealth to seek adjustment or recovery from certain beneficiaries' estates. Section 32.1-326.1 of the Code of Virginia directs DMAS to comply with the federal requirements and operate a Medicaid estate recovery program.

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, the environmental benefits, and the problems the proposal is intended to solve.

Several aspects of the regulations regarding Medicaid Estate Recovery are in need of updating and clarification. This action clarifies ambiguous language and augments the language of the Estate Recovery regulations to add greater detail to enhance understanding about the Medicaid Estate Recovery process. This proposed action is expected to have a significant and positive impact on the health, safety, and welfare of the citizens of the Commonwealth by aiding the fiscal integrity of the Medicaid program, and recovering Medicaid benefits correctly and incorrectly paid under the estate recoveries provisions in §1917(b) of the *Social Security Act*. This regulatory action further provides clarification on mandatory and optional recovery when a Medicaid beneficiary, receives services that are specified as collectable services under the Commonwealth's State Plan for estate recovery.

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.)

The sections of the State Plan for Medical Assistance that are affected by this action are State Plan Under Title XIX of the Social Security Act; Medical Assistance Program; General Provisions; Administration of Medical Assistance Services (12 VAC 30-10-560, 12 VAC 30-20-140, and 12 VAC 30-20-141).

DMAS intends to update the language of the Estate Recovery regulations to more closely reflect current Agency practice based upon language provided by the federal Medicaid agency, CMS. Specifically the Agency intends to delete the definitions for “Estate” and “Applicable medical assistance payments” located in 12 VAC 30-10-560 and move these two definitions into the new regulations section, 12 VAC 30-20-141.

The Agency also intends to repeal 12 VAC 30-20-140 (Estate Recoveries) in order to re-promulgate this section in a restructured and revised format in 12 VAC 30-20-141. The Agency intends to revise several of the definitions included in the section and to add two new definitions, for “Cost effective” and “Homestead of modest value”. The revision also includes the exemption from Medicaid Estate recovery for American Indian/Alaska Native (AI/AN) income, resources and property as defined in the State Medicaid Manual, and assets or resources that were disregarded due to an authorized State Long-Term Care Insurance Partnership policy.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The advantages of these changes to the public are that they clarify what is required by CMS relating to Medicaid Estate Recovery. The proposed update does not change how DMAS is currently handling Medicaid Estate recovery, but better articulates the provisions and understanding of the regulations. DMAS has not identified any disadvantages to the public or the Commonwealth regarding these proposed changes.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are 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 the proposed changes that exceed 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.

There are no particular localities that are impacted by these regulation updates as they apply uniformly 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 board/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 may do so by mail, email or fax to Kathy Colley, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, phone number (804) 786-3839, Fax number (804) 786-11680, Kathy.colley@dmas.virginia.gov . Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period. Written comments may also be submitted via the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) in the open public comment forum for these DMAS proposed regulations, which are listed under the Secretariat for Health and Human Resources.

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	No additional impact to the Agency
Projected cost of the regulation on localities	No impact to the localities
Description of the individuals, businesses or	No additional impact to current population that is

other entities likely to be affected by the regulation	affected by estate recovery.
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.	N/A
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	No additional cost will be incurred related to clarifying the Estate regulations.

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.

The two alternatives to the present action were to leave the current regulations intact, or to make fewer changes to the regulations. However, in reviewing these regulations the Agency decided to make all the changes included in this package to fully address all current concerns. These changes bring about greater clarity, and are designed to better facilitate the settling of estates of decedent Medicaid enrollees.

Regulatory flexibility analysis

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 change impacts Medicaid recipients’ estates, which do not meet the statutory definition of small business. Therefore, the adverse impact on small businesses does not apply in the development of this regulatory action.

Public comment

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

DMAS' Notice of Intended Regulatory Action was published in the 8/20/2007 Virginia Register (VR 23:25) for its public comment period from August 20, 2007 to September 19, 2007.

There were no public comments during the Notice of Intended Regulatory Action (NOIRA) process.

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; or 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 is not expected to affect disposable family income.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

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
12VAC30-20-140	12VAC30-20-141	Medicaid Estate Recovery process	The change will clarify CMS requirements for DMAS to pursue estate recovery.
12VAC30-20-140	12VAC30-20-141	Add definitions for "Cost effective" and Homestead of modest value."	The definitions will be added to the proposed new section to clarify CMS requirements.
12VAC30-10-560 (D)	12VAC30-20-141	D. Estate Recovery, 1.Definitions: for "Applicable medical assistance payments and "Estate".	The definitions will be moved to the new section so that all related estate recovery definitions and requirements will be located in one section.