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Fast-Track Regulation Agency Background Document

Agency name	Department of Medical Assistance
Virginia Administrative Code (VAC) citation(s)	12 VAC30-110-1370
Regulation title(s)	Eligibility and Appeals
Action title	DOC Signature Authority for Medicaid Applications
Date this document prepared	November 25, 2014

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 regulatory action provides authority for the Department of Corrections (DOC) to sign applications for Medicaid for certain incarcerated offenders for the purpose of Medicaid reimbursing for inpatient hospital stays. Signature authority for the DOC would be limited to incarcerated individuals who are either unable to sign, or refuse to sign, an application for medical assistance. Signature authority for the DOC is needed in order for the Department of Medical Assistance Services (DMAS) to provide Medicaid reimbursement for inpatient hospital stays for eligible offenders, as permitted by the Centers for Medicare and Medicaid Services (CMS). This action will permit DMAS to claim the available federal matching dollars for these inpatient hospital stays by persons incarcerated with DOC.

Statement of final agency 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 entitled DOC Signature Authority for Medicaid Applications (12 VAC 30-110-1370) 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.

11/25/2014

/s/ Cynthia Jones

Date

Cynthia B. Jones, Director

Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person'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.

Section 1905a(A) of the *Social Security Act* specifically excludes Federal Financial Participation (FFP) for medical care provided to inmates of a public institution, except when the inmate is a patient in a medical institution off the grounds of the correctional facility. CMS first issued guidance to states in January 1998 clarifying Medicaid coverage policy for inmates of a public institution in such situations.

Chapter 3 of the *2014 Special Session I Acts of the Assembly*, Item 384 J(2), directed that DMAS authorize the director of the Department of Corrections, or his designee, to sign the Medicaid application for any inmate who refuses to sign, or is unable to sign, on his own behalf.



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 purpose of this regulatory action is to provide authority for the director of the DOC, or his designee, to sign Medicaid application forms for any inmate who is unable to sign, or unwilling to sign, on his own behalf. The intent of this action is to enable Medicaid coverage of inpatient hospital care that inmates may require and the subsequent claiming of the available federal matching funds.

Historically, the federal government has not shared in the cost of Medicaid coverage for incarcerated individuals and Medicaid eligibility has been terminated when an individual enters a correctional facility. However, CMS issued a clarification for states that allows for Medicaid payment of inpatient hospital stays for incarcerated individuals who are otherwise eligible for Medicaid coverage. CMS considers an individual to not be incarcerated during the period of time individuals are in a hospital receiving inpatient services.

Pursuant to Chapter 806 of the *2013 Acts of the Assembly*, Item 388 J, DMAS began coverage of inpatient hospital costs for Medicaid-eligible offenders on July 1, 2013.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

The fast track process is being utilized to promulgate this change in regulatory language as it is expected to be a non-controversial amendment to existing regulations. This regulatory action will allow designated staff at the DOC to assist certain offenders in applying for benefits to which they may be entitled.

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.

The state-only regulation that is affected by this action is Eligibility and Appeals (12VAC30-110-1370).

All applicants for Medicaid must sign their application in order for their eligibility to be determined. Individuals may designate an authorized representative to sign an application on their behalf and, in the case of an incapacitated individual, a court will designate a guardian or

conservator who can sign an application. This regulatory action expands the types of persons authorized to sign an application on an individual's behalf, but limits the expansion solely to certain DOC inmates.

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.

There is no disadvantage to the public or the Commonwealth with the adoption of this regulation. Adoption of this regulation will result in the DOC receiving authority to sign Medicaid applications on behalf of certain offenders. The advantage to the Commonwealth of this action is that federal matching funds will now be available when an inmate with DOC requires inpatient hospital care. Prior to the July 2013 action (discussed on page 3), the Commonwealth has not been able to claim matching federal funds and has reimbursed for such care with 100% General Funds.

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 proposal that are more restrictive than 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 are particularly affected by this change as implementation is statewide.

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.

There is no adverse impact on small business. There are no alternative regulatory methods to accomplish the objective.

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.

<p>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</p>	<p>No new cost to the Commonwealth. Virginia already provides Medicaid coverage for inpatient hospital costs to eligible offenders as a result of the 2013 change. This action complies with a long standing federal requirement that Medicaid applications be signed. This action accomplishes that end when the incarcerated offender refuses to sign or is unable to sign his Medicaid application.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>None</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>DOC inmates who refuse to sign, or are unable to sign, their Medicaid applications. To date, there have only been a small number of individuals (less than 10) in this situation.</p>
<p>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: 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.</p>	<p>No small businesses will be affected by this action. The entire DOC system could potentially be affected depending on which inmates require inpatient hospital care and of those, how many refuse to sign, or are unable to sign, their Medicaid application.</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: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and 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</p>	<p>None</p>

regulations.	
Beneficial impact the regulation is designed to produce.	Will allow for Medicaid coverage and reimbursement for an inpatient hospital stay for an eligible offender that would otherwise be paid for with state only dollars.

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.

There are no alternatives to this proposal. Absent adoption of this proposal, applications for Medicaid will not be able to be signed by designated Department of Corrections staff. Such situations have resulted in inpatient hospital stays for inmates being paid for with 100% General Funds. This action will move 50% of those costs on to the federal dollars claimed by the Commonwealth.

Public participation notice

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.

Family impact

Please assess the impact of this 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.

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.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
12VAC30-110-1370		Requires applicants to sign an application form unless the application is filed and signed by the applicant's parent, caretaker relative, legal guardian or conservator, attorney-in-fact or authorized representative.	<p>B. The director of the Department of Corrections, or his designee, may sign the Medicaid application form for an inmate who refuses or is unable to sign, for purposes of Medicaid reimbursement.</p> <p>The impact will be to allow the claiming of federal matching funds for inpatient hospital stays that are required by inmates of DOC.</p>