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## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Department of Medical Assistance Services
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30, Chapters --40 and --110
<b>Regulation title</b>	Eligibility Conditions and Requirements -- Post-eligibility treatment of institutionalized individuals; and Eligibility and appeals: Mandatory deductions from institutionalized spouse's income.
<b>Action title</b>	Personal Needs Allowance (PNA) Increase
<b>Document preparation date</b>	April 24, 2007

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006(A) of the Administrative Process Act (APA) ([townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://townhall.state.va.us/dpbpages/dpb_apa.htm)), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act ([leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4100](http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4100)), the *Virginia Register Form, Style, and Procedure Manual* ([legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)), and Executive Orders 21 (02) and 58 (99) ([governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html))

### Summary

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

The Department of Medical Assistance Services was directed in *2007 Appropriation Act*, Item 302 NNN to increase the personal needs allowance for institutionalized Medicaid recipients, as follows:

“The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance and any related state regulations to increase the personal needs allowance for institutionalized individuals from \$30 to \$40. The department shall have authority to implement this change prior to the completion of any regulatory process undertaken in order to effect such change.”

**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, Eligibility Conditions and Requirements -- Post-eligibility treatment of institutionalized individuals (12 VAC 30-40-20) and Eligibility and Appeals -- Mandatory deductions from institutionalized spouse's income (12 VAC 30-110-950). 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 that these regulations are full, true and correctly dated.

4/24/07  
Date

/s/ P.W. Finnerty  
Patrick W. Finnerty, Director  
Dept. of Medical Assistance Services

**Substance**

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.*

The sections of the Virginia Administrative Code that are affected by this action are: Eligibility Conditions and Requirements -- Post-eligibility treatment of institutionalized individuals (12 VAC 30-40-20) and Eligibility and Appeals -- Mandatory deductions from institutionalized spouse's income (12 VAC 30-110-950).

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 and services.

This action meets the exemption provided by the *Code of Virginia* §2.2 – 4006 (A) (4) (a) because it conforms the attached regulations to the requirement of Item 302 NNN of the *2007 Appropriation Act* and does not materially differ. Additionally, the Agency has no discretion concerning the implementation of this mandated requirement. Details of this mandatory change are set forth below:

The personal needs allowance is the amount of the institutionalized individual's monthly income that he is allowed to keep for personal purchases. The remainder of his monthly income is required by federal and state law to be contributed towards the cost of his institutional care. The personal needs allowance can be used by the individual for any personal purchases as he

chooses. Typically, these purchases are for personal hygiene items, magazines, books, or other such personal items not supplied by the individual's nursing facility.

Currently the monthly personal needs allowance for a Medicaid recipient in a nursing facility or ICF/MR is \$30. The *2007 Appropriation Act* required DMAS to increase the personal needs allowance from \$30 to \$40 monthly. This amount has not been increased since 1988; the increased amount will allow institutionalized individuals to keep a larger portion of their income to pay for items and services not covered by Medicaid.

When computing the application of an individual's income to the institutional cost of care in the post-eligibility process, the Commonwealth considers all married institutionalized individuals to be a single individual. The Personal Needs Allowance in this calculation is always computed for a single individual; therefore there is no need to make any changes with regard to the amount of the PNA for couples as described in the regulations. Because DMAS does not actually compute a PNA for couples, the Agency intends to remove this reference entirely in a future regulatory action.

### Family impact

*Assess the impact of this regulatory action on the institution of the family and family stability.*

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This final exempt regulatory action will not have any direct impact on the institution of the family or the stability of the family. It will not strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; it will not encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, or one's children and/or elderly parents; nor will it strengthen or erode the marital commitment.