



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	Dept. of Medical Assistance Services; 12 VAC 30
<b>VAC Chapter Number:</b>	Chapter 50
<b>Regulation Title:</b>	Amount, Duration, and Scope of Services: Non-Emergency Transportation Services
<b>Action Title:</b>	Non-Emergency Transportation as Administrative Expense
<b>Date:</b>	02/06/2001

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

This regulatory action proposes to cover Medicaid transportation as an administrative expense, as permitted by federal regulations, instead of as a medical expense. This would apply to non-emergency transportation services only. This change will permit the coordination of trips and a reduction in expenditures by broker contractors.

### Changes Made Since the Proposed Stage

*Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.*

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No changes have been made to these final regulations since the proposed regulations.

### Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

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I, the Director of the Department of Medical Assistance Services, hereby approve the foregoing Regulatory Review Summary and the amended State Plan pages and take the adoption action stated herein on January 29, 2001. I certify that this final regulatory action, entitled Non-Emergency Transportation as Administrative Expense (12 VAC30-50-300, 12 VAC 30-50-530), has completed all the requirements of the Code of Virginia § 9-6.14:7.1, of the Administrative Process Act).

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.*

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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 the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Director approved, on May 8, 2000, the initiation of a public comment period for the proposed regulations. The Code, in § 9-6.14:7.1 et seq., requires agencies to adopt and amend regulations subject to public notice and comment when the action being taken does not meet one of the statutory exemptions.

The Notice of Intended Regulatory Action for this regulation was filed with the Virginia Register on January 27, 2000, for the NOIRA comment period from February 29 through March 30, 2000. No comments were received during the NOIRA comment period.

Title 42 CFR § 431.53 states that the Medicaid state plan must ensure necessary transportation for recipients to and from providers of medical services. The State Plan must also describe the state's methods that meet this requirement.

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of this proposal is to cover transportation as an “administrative expense” as permitted by federal regulations, except for emergency ambulance coverage that will remain unchanged. This administrative approach will allow for the extensive coordination of trips and a reduction in DMAS transportation expenditures. The benefits to recipients’ welfare are expected to be their easier access to services, in a more reliable, dependable manner. This transportation service coordination will also provide recipients with a complaint mechanism when transportation providers fail to keep appointments or provide less than satisfactory care.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.*

The sections of the State Plan affected by this action are Narrative for the Amount, Duration and Scope of Services: Any other medical care and any other type of remedial care recognized under State law, specified by the Secretary of Health and Human Services: Transportation Services (12 VAC 30-50-300) and Methods of Providing Transportation (Attachment 3.1-D) (12 VAC 30-50-530).

Medicaid programs are federally required to cover transportation, by one of two methods, or a combination of the two, to ensure that Medicaid recipients have access to covered medical services. Federal regulations, at both 42 CFR §§ 431.53 and 440.170(a), permit this coverage in either of two ways, at the state's discretion: § 431.53 permits transportation coverage as an administrative expense; § 440.170(a) permits transportation coverage as a medical expense. Besides the slight difference in federal financial participation for this service (the medical expense is federally reimbursed slightly higher), the most significant difference in these two

alternatives is the amount of service coordination and management that is permitted by 42 CFR § 431.53.

DMAS currently covers transportation as a “medical service” which means that transportation is covered in a comparable manner to physician, pharmacy, and other Medicaid services. Under this arrangement, Medicaid recipients have “freedom of choice” of transportation providers. As defined under federal regulations, this means that recipients may select among transportation providers enrolled with DMAS for each trip to a Medicaid covered service.

The current transportation coverage has been subject to misuse and even abuse by recipients and transportation providers. DMAS has knowledge of the following: (i) recipients taking trips to non-covered Medicaid services; (ii) many single passenger trips where multiple passenger trips could be coordinated instead; (iii) trips where a more sophisticated type of transportation is utilized than the recipient needs (an ambulance instead of a bus, for example); (iv) trips to medical providers at considerable distances away while ignoring much closer medical providers; (v) and trip mileage being billed to DMAS which is higher than the actual mileage incurred.

This regulatory action will allow DMAS to cover transportation as an “administrative expense” under federal regulations except for emergency ambulance coverage that will remain unchanged. This administrative approach will allow for the extensive coordination of trips and a reduction in DMAS transportation expenditures. Contractors will coordinate trips and reimburse transportation providers for services.

The contractor will be able to manage the transportation to ensure that it is only to Medicaid covered services, that the type of transportation is suitable to the medical needs of the recipient, that closer medical providers are given consideration in planning trips, and that reported trip mileage is accurate.

Through a recent transportation pilot project, the benefits of a contractor coordinating transportation have been realized. These regulations expand on the findings of the pilot project and include the features of transportation covered as an administrative service under federal regulations.

On October 27, 2000, DMAS issued a request-for-proposals solicitation for non-emergency transportation services, which is based on these regulatory changes. The RFP addresses transportation needs of Medicaid recipients not enrolled in DMAS capitated managed care plans. In the RFP, Virginia is divided into seven regions. DMAS is seeking a “broker” for each region. The broker will receive requests for non-emergency transportation from Medicaid recipients in the region, perform screening of recipients such as confirming that the recipients are Medicaid eligible and the trips are to covered Medicaid services, then arrange for the transportation and pay the transportation providers. The deadline for bidders under the RFP to submit proposals was October 11, 2000, at 2PM. DMAS anticipates implementation of this project on April 2, 2001, however this is contingent on final approval of this regulatory package before that date.

This regulatory action is essential to protect the safety and welfare of Medicaid recipients because it will ensure that recipients are able to reach their doctors’ or other health care

providers' offices for appointments in the most expedient manner possible. This regulatory action is also important for the economical performance of an important governmental function because the contractor will be permitted to 'double-up' recipients traveling to the same provider on the same day. Other types of cost savings uses of transportation services will also be permitted by this regulatory action.

The changes as a result of this regulatory package will in general affect all transportation providers (slightly less than 1,000) and Medicaid recipients not in health maintenance organizations (approximately 350,000 recipients). The current arrangement of the Medicaid recipient contacting the transportation provider for a ride such as to the doctor will no longer occur. The transportation providers and the Medicaid recipients will be resistant to this change once they learn that all non-emergency trips will be coordinated by the broker. Based on the experience of the Southwest Virginia transportation pilot, challenges from the transportation providers and recipients to these changes in DMAS transportation regulations will occur including possibly legal challenges. Some providers and recipients can be expected to employ means to thwart the brokerage approach.

In FY00, DMAS reimbursed approximately \$53,870,000 for all transportation services to Medicaid recipients not in DMAS capitated managed care plans. This reimbursement is a significant increase from 1990 when DMAS reimbursed approximately \$9,819,000 for transportation services and the number of persons on Medicaid was only about 50,000 less than those not in DMAS capitated managed care plans in FY99. Other states that have utilized transportation brokerage methods have reported savings in excess of 15 percent. This savings is somewhat offset by a slight reduction in the percentage of federal funding when transportation is moved from a medical service to an administrative service (federal funding will switch from approximately 51.81% in FFY 2001 to 50%. There are no localities, which are uniquely affected by these regulations as they apply statewide.

This action does not affect recipients who are enrolled in health maintenance organizations because the HMO either directly provides or arranges for recipient transportation. DMAS' reimbursement for the provision of this service is contained within the capitation fee that is paid for each recipient. DMAS does not make separate payments for transportation services for HMO-enrolled recipients.

The Department of Medical Assistance Services is established under the authority of Title XIX of the federal Social Security Act, Public Law 89-97, as amended; and Title 32.1, Chapter 10, of the Code of Virginia. The Virginia Medicaid Program is funded with both federal and state funds. The current federal funding participation (FFP) for medical assistance expenditures is 51.85% on October 1, 2000.

This program is not expected to affect local departments of social services' eligibility determination process. Community Services Boards and local Area Agencies on Aging are expected to be financially affected by this change. The broker is to develop an adequate network of local transportation providers similar to what is found currently for Medicaid recipients. If the regional transportation brokers and these providers do not establish contracts, then these agencies will lose a source of income. The number of Medicaid trips is expected to decrease statewide so

all transportation providers with contracts with brokers are likely to see a decrease in income from Medicaid.

### Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 include a sentence to that effect.*

The benefits to recipients are expected to be their easier access to services, in a more reliable, dependable manner. This transportation service coordination will also provide recipients with an improved quality of services including a complaint mechanism when transportation providers fail to keep appointments or provide less than satisfactory service. The only negative response expected might be from individuals who have, in the past, been able to successfully bill for inappropriate services and inaccurate mileage amounts.

### Public Comment

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

DMAS' proposed regulations were published in the August 14, 2000, Virginia Register for their public comment period from August 15 through October 13, 2000. No comments were received.

### Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

There are no changes in this final regulation over those changes which were initially proposed for comment period.

### Family Impact Statement

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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.*

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This regulatory action will not have any negative affects 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. It will discourage the use of Medicaid transportation services for shopping and other non-Medicaid-covered reasons.

The family can expect an improved quality of Medicaid transportation services. Medicaid recipients will need to make just one call to the broker to have a trip arranged. DMAS will be holding the brokers accountable in such areas as vehicle condition, driver qualifications, and recipient satisfaction surveys. There will also be a complaint tracking system.