



Virginia  
Regulatory  
Town Hall

Exempt Action Final Regulation  
Agency Background Document

<b>Agency Name:</b>	Dept. of Medical Assistance Services (12 VAC 30)
<b>VAC Chapter Number:</b>	Chapter 110
<b>Regulation Title:</b>	Real and Personal Property and Transfer of Assets
<b>Action Title:</b>	Transfer of Assets and Resources
<b>Date:</b>	02/09/2001

Where an agency or regulation is exempt in part or in whole from the requirements of the Administrative Process Act (§ 9-6.14:1 *et seq.* of the *Code of Virginia*) (APA), the agency may provide information pertaining to the action to be included on the Regulatory Town Hall. The agency must still comply the requirements of the Virginia Register Act (§ 9-6.18 *et seq.* of the *Code of Virginia*) and file with the Registrar and publish their regulations in a style and format conforming with the *Virginia Register Form, Style and Procedure Manual*. The agency must also comply with Executive Order Fifty-Eight (99) which requires an assessment of the regulation's impact on the institution of the family and family stability.

This agency background document may be used for actions exempt pursuant to § 9-6.14:4.1(C) at the final stage. Note that agency actions exempt pursuant to § 9-6.14:4.1(C) of the APA do not require filing with the Registrar at the proposed stage.

In addition, agency actions exempt pursuant to § 9-6.14:4.1(B) of the APA are not subject to the requirements of the Virginia Register Act (§ 9-6.18 *et seq.* of the *Code of Virginia*) and therefore are not subject to publication. Please refer to the *Virginia Register Form, Style and Procedure Manual* for more information.

Summary

*Please provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation, instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This action amends the Plan for Medical Assistance concerning real and personal property and transfer of assets. In response to the Governor's Executive Orders 15 and 25, the Department reviewed the eligibility regulations for Medicaid. During this review, it was determined that there were technical inaccuracies in the regulations that needed correction. Therefore, these

amendments to the regulations are necessary to correct the technical language and resolve conflicts with requirements found in the federal and state law and 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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The Director of the Department of Medical Assistance Services adopted these final regulations on

## Additional Information

*Please indicate that the text of the proposed regulation, the reporting forms the agency intends to incorporate or use in administering the proposed regulation, a copy of any documents to be incorporated by reference are attached.*

*Please state that the Office of the Attorney General (OAG) has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law. Note that the OAG's certification is not required for Marine Resources Commission regulations.*

*If the exemption claimed falls under § 9-6.14:4.1(C) (4)(c) of the APA please include the federal law or regulations being relied upon for the final agency action.*

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The state regulations affected by this action are: 12VAC30-110-630, 12VAC30-110-650, 12VAC30-110-660, 12VAC30-110-670, 12VAC30-110-700. Each issue is discussed separately below with its relevant change.

1. 12VAC30-110-630. Income producing real property other than the home.

The catch line is amended to clarify that this regulation applies only to aged, blind and disabled individuals. This language is based upon the requirement in §1902(a)(10)(C)(III) of the *Social Security Act* which requires that the method for treating resources for aged, blind, and disabled individuals be the same as that used in the Supplemental Security Income program. The requirement has been part of Medicaid regulations for years but the catch line of the regulation did not state that the regulation applied only to aged, blind, and disabled individuals.

2. 12VAC30-110-650. Deeming of income and resources; responsibility of spouses.

The language is being changed to conform to the requirements in 42 CFR §435.602(a)(3). The federal regulations changed the requirements for deeming of income and resources between spouses when the couple ceases to live together. (58 FR 4930, Jan. 19, 1993 and 59 FR 43052, August 22, 1994) The corresponding state regulation was not changed at that time.

3. 12VAC30-110-660. Deeming of income and resources; responsibility of parents for blind or disabled children.

The regulation is changed to make it clear that the requirement for school attendance only affects the child over age 18, in order to conform with the requirements of 42 CFR § 435.602(a)(2).

4. 12VAC30-110-670. Aid to Dependent Children (ADC) related Medically Needy Individuals.

The language "Medically Needy" is added to the catch line to clarify that this regulation pertains to Medically Needy individuals only. This language conforms to Attachment 2.6-A of the State Plan for Medical Assistance.

5. 12VAC30-110-700. Transfer of Assets.

The wording of the regulation is revised to conform to §55-19.5 of the *Code of Virginia*. This law was amended in 1998 but the state regulation was not amended to conform to the legislative change. The language tracks the 1998 amendment to the law that limited the exception for trusts valued at less than \$25,000 only to trusts created before August 11, 1993. Trusts created on or after August 11, 1993 are not exempted from the provisions of subparagraph A regardless of their value.

6. 12VAC30-110-710. Transfer of Resources.

This regulation incorporates the existing definition of undue hardship into 12 VAC 30-110-710 that is presently located at 12 VAC 30-110-720. The term "undue hardship" has not been defined in the transfer of resources regulations even though the regulations have permitted the State to make a finding of eligibility for Medicaid even when an uncompensated transfer of assets has occurred when an undue hardship would occur. The State Plan Attachment 2.6-A, page 26 states that there is a hardship rule. However, the failure being corrected in this action is the inclusion of a definition of hardship that describes the degree impact that denial of benefits must reach in order to constitute a hardship.

The OAG's certification as to the agency's authority to promulgate these regulatory changes was dated .

### 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.*

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.

