



Virginia  
Regulatory  
Town Hall

## Notice of Intended Regulatory Action Agency Background Document

<b>Agency Name:</b>	Dept. of Medical Assistance Services 12 VAC 30
<b>VAC Chapter Number:</b>	12 VAC 30-110
<b>Regulation Title:</b>	Married and Institutionalized Individuals Eligibility and Patient Pay
<b>Action Title:</b>	Hardship Rule
<b>Date:</b>	2/20/2001

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

### Purpose

*Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.*

The purpose of this action is to establish a more precise definition of the hardship rule to be used in determining Medicaid eligibility for institutionalized individuals who have spouses living in the community.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.*

The Code of Virginia (1950) as amended, §32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The

Code of Virginia (1950) as amended, §32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) §§9-6.14:7.1 and 9-6.14:9.1, for this agency's promulgation of proposed regulations subject to the Governor's review.

Federal law at §1924(c)(3)(C) provides that an institutionalized spouse shall not be ineligible for medical assistance because resources are available for the costs of care when the state determines that denial of eligibility would work an undue hardship.

### Substance

*Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.*

This regulation is essential to protect the health and welfare of citizens and for the efficient and economical performance of an important governmental function. This revision to existing regulations is necessary because the existing regulations were promulgated in 1990 and have not been revised since that time. During the last decade, a number of cases have arisen in which circumstances have pointed to the importance of a carefully crafted hardship provision.

The regulations governing the Medicaid eligibility of married institutionalized individuals are essential to the public's health and welfare. Many elderly and disabled Virginians are unable to pay the high cost of long-term care services without assistance. In addition, when one spouse of a couple needs long-term care services, the other spouse's financial security may be seriously threatened. These regulations specify how local department of social services' eligibility workers must evaluate the income and resources owned by couples when one spouse needs long-term care.

Federal and state laws require that a portion of the couple's resources be reserved for the support of the community spouse of an institutionalized individual. Failure to correctly allot a portion of the couple's resources to the community spouse could result in the impoverishment of the community spouse and prevent him or her from having sufficient income and resources to meet basic health and maintenance needs. Because individual circumstances may present unique and

compelling situations which cannot be equitably addressed by regulations, the application of a hardship provision is needed to avoid suffering and deprivation of life sustaining medical care.

Local social service agencies now have to consider hardship claims made by applicants for medical assistance and these regulations will provide clearer and more specific guidance toward that end.

## Alternatives

*Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.*

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Since the Medicaid eligibility regulations governing determinations of eligibility of married institutionalized individuals first became effective in 1990, the Department has been reviewing the performance of local eligibility workers in processing applications for Medicaid. Local agencies have referred cases of unusual complexity or cases in which hardship is alleged to the Department for review and consultation. During this time, it has become apparent that there is a need for a specific rule by which local eligibility workers can address allegations of undue hardship.

The Department desires to provide relief in instances in which genuine hardship may occur. At the same time, DMAS wishes to not make the Medicaid program subject to manipulation or abuse by frivolous or unsubstantiated hardship claims by individuals who simply desire to shift responsibility for the cost of expensive long-term care from private payment to public assistance. This proposed regulation is the result of careful evaluation of the Department's experience over the past ten years.

## Family Impact Statement

*Please provide a preliminary analysis of the potential 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.*

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In developing these regulations the DMAS has reviewed the impact that the regulations will have on families and their ability to remain self-sufficient and maintain personal responsibility. The regulations will encourage self-sufficiency and personal responsibility by ensuring that individuals use their resources to support themselves in their old age rather than shifting to the Commonwealth the responsibility to provide long-term care services.

On the other hand, the regulations will ensure that spouses are not reduced to poverty by the illness or incapacity of the institutionalized individuals. Sometimes, couples have been forced to consider divorce in order to avoid impoverishment when a spouse's health fails and he or she requires expensive long-term care. This regulation will reduce the hardship experienced by the community spouse and prevent the desperation that could erode the marital commitment. The regulations will protect a portion of the couple's income and resources for support of the community spouse.