COMMONWEALTH of VIRGINIA

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TO: **BRIAN MCCORMICK**
Regulatory Supervisor
Virginia Department of Medical Assistance Services

FROM: **MICHELLE A. L'HOMMEDIEU**
Assistant Attorney General

DATE: **April 15, 2013**

SUBJECT: **Fast Track Regulations - Repeal of Health Insurance for the Working Uninsured Regulations (3893/6459)**

I am in receipt of the attached repeal of regulations regarding health insurance for the working uninsured (12 VAC 30-100-400 through 12 VAC 30-100-490). You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services ("DMAS") has the legal authority to repeal these regulations and if such repeal comports with state and federal law.

Based on that review, it is my view that the Director, acting on behalf of the Board of Medical Assistance Services pursuant to Virginia Code §§ 32.1-324 and 325, has the authority to repeal these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

Pursuant to Va. Code § 2.2-4012.1, if an objection to the use of the fast-track process is received within the 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, DMAS shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process set out in this article with the initial publication of the Fast-Track regulation serving as the Notice of Intended Regulatory Action.

Because the repeal of these regulations will amend the State Plan, approval by CMS will also be required. If you have any questions or need additional information about these regulations, please contact me at 786-6005.

cc: Kim F. Piner, Esquire

Attachment

~~Part IV~~
~~Health Insurance for the Working Uninsured~~

12VAC30-100-400. Applicability. (Repealed.)

~~In the event that definitions or provisions of this part conflict with definitions or provisions of the Bureau of Insurance statutes or regulations governing health maintenance organizations, then the relevant Bureau of Insurance definitions and provisions shall take precedence.~~

12VAC30-100-410. Definitions. (Repealed.)

~~A. In this part, the Health Insurance Program for Working Uninsured Individuals will be referred to as "program." When reference is made to eligibility for the program, or to program benefits, the intent is to refer specifically to the health insurance premium subsidies provided through the program.~~

~~B. The following words and terms when used in this part shall have the following meanings unless the context clearly indicates otherwise:~~

~~"Appeal" means any written communication from a subscriber or his representative which clearly expresses that he wants to present his case to a reviewing authority.~~

~~"Applicant" means an individual who has applied for or is in the process of applying for health insurance premium subsidies.~~

~~"Applicant's or subscriber's representative" means a person who, because of the applicant's or subscriber's mental or physical incapacity, is authorized to complete, sign, or withdraw an application for the benefits of the program; activate the appeal process; and otherwise supply any information requested by the program on behalf of the applicant or subscriber.~~

~~"Contractor" means a health maintenance organization in each pilot site that enters into a contract with DMAS to provide the Essential Health Benefits Plan to beneficiaries of the program.~~

~~"Covered services" means services as defined in the Essential Health Benefits Plan.~~

~~"Date of application" means either the date that the contractor officially receives an application from an employee or the date that the contractor officially receives enough employee applications from any given employer to meet its minimum participation requirement if the contractor has such a requirement.~~

~~"Department" or "DMAS" means the Department of Medical Assistance Services.~~

~~"Dependent" means the spouse or child of an eligible employee, subject to the applicable terms of the policy, contract or plan covering the eligible employee.~~

"Disenrollment" means a subscriber who voluntarily decides to discontinue receiving subsidized health insurance premiums, or is determined ineligible by DMAS to continue receiving subsidized health insurance benefits.

"Eligible alien" means an individual who satisfies the alien status criteria for medical assistance services administered by the Department of Medical Assistance Services (see 12VAC30-40-10 and 12VAC30-110-1300).

"Eligible person" or "eligible employee" means a full-time employee of a primary small employer determined by DMAS to meet the qualifications needed to receive premium subsidies under the program. Other employees who do not meet the necessary income requirements may enroll in the contractor's health plan if they pay the cost of the premium beyond any contribution from their employer. However, throughout this part, employees described as eligible for the program are those eligible for premium subsidies.

"Eligible employer" or "eligible firm" means any employer determined by the program and the contractor to meet the qualifications needed in order for its employees to be qualified to enroll in the program.

"Emergency services" means those health care services that are rendered by affiliated or nonaffiliated providers after the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent layperson who possesses an average knowledge of health and medicine to result in (i) serious jeopardy to the mental or physical health of the individual, (ii) danger of serious impairment of the individual's bodily functions, (iii) serious dysfunction of any of the individual's bodily organs, or (iv) in the case of a pregnant woman, serious jeopardy to the health of the fetus. Emergency services provided within the plan's service area shall include covered health care services from nonaffiliated providers only when delay in receiving care from a provider affiliated with the health maintenance organization could reasonably be expected to cause the subscriber's condition to worsen if left unattended.

"Essential Health Benefits Plan" means a health benefit package developed pursuant to B§ 38.2-3431 C of the Code of Virginia.

"Family" means the spouse or child of an eligible employee, subject to the applicable terms of the policy, contract or plan covering the eligible employee.

"Grievance" means any request by a subscriber to a contractor to resolve a dispute.

"Health care plan" means any arrangement in which any health maintenance organization undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services. A significant part of the arrangement shall consist of arranging for or providing health care services, as distinguished from mere indemnification against the cost of the services, on a prepaid basis.

~~"Health insurance premium subsidy" means the portion of the health insurance premiums paid by the program on behalf of an individual eligible to participate in the program.~~

~~"HMO" means a health maintenance organization which undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.~~

~~"Initial enrollment period" means a period of at least 30 days.~~

~~"Late subscriber" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer after the initial enrollment period provided under the terms of the health benefit plan.~~

~~"Minimum participation requirement" means the minimum percentage of employees in a given firm who are required to enroll in the health plan before the contractor agrees to provide coverage to that firm. The minimum participation requirement may be met through the enrollment of subsidized as well as nonsubsidized employees within any given firm.~~

~~"Network" means doctors, hospitals or other health care providers who participate or contract with a managed care plan and, as a result, agree to accept a mutually agreed upon sum or fee schedule as payment in full for covered services.~~

~~"Program" means the Health Insurance Program for Working Uninsured Individuals. References to eligibility for the program specifically refer to subsidized health insurance premium payments.~~

~~"Qualified employee" means an employee who works for a small group employer on a full-time basis; has a normal work week of 30 or more hours; has satisfied applicable waiting period requirements; and is not a part-time, temporary or substitute employee.~~

~~"Service area" means a clearly defined geographic area in which the health maintenance organization has arranged for the provision of health care services to be generally available and readily accessible to subscribers.~~

~~"Small employer" means an employer who employed an average of at least two but not more than 50 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the program year.~~

~~"Subscriber" means an individual who has been determined to be eligible for, and is receiving, premium subsidies through the program.~~

12VAC30-100-420. ~~[Withdrawn]~~ (Repealed.)

~~Historical Notes~~

~~Derived from Virginia Register Volume 14, Issue 25, eff. October 1, 1998; withdrawn, Virginia Register Volume 15, Issue 2 (October 12, 1998).~~

12VAC30-100-430. Program contractors. (Repealed.)

~~A. The department shall contract with one HMO in each pilot site to market the program, enroll the beneficiaries, and provide medical care services. These HMOs are referred to as the contractors.~~

~~B. The contractors shall be responsible for the following services:~~

~~1. Each contractor shall market the program to the employers and employees in its respective pilot area and enroll subscribers into its health plan according to provisions of the contract between the contractor and DMAS.~~

~~2. The contractors shall provide, at a minimum, all medically necessary covered services provided under the Essential Health Benefits Plan, except as otherwise modified or excluded in this part. The contractor shall provide subscribers with evidence of coverage and charges for health care services as provided for in B§ 38.2-4306 of the Code of Virginia.~~

~~3. The contractor shall provide emergency services as provided for in B§ 38.2-4300 of the Code of Virginia.~~

~~4. The contractors shall pay for services furnished in facilities or by practitioners outside the contractors' networks if the needed medical services or necessary supplementary resources are required by the Essential Health Benefit Plan and are not available in the contractors' networks. The contractor may establish procedures to authorize these services.~~

~~5. The contractors shall verify that applicants for premium subsidies are employed full time by primary small employers, that the employers agree to pay if not at least 50% of the cost of employee only or single coverage for their employees then that percentage as specified in the appropriate contract with DMAS, and that the employer has not offered health insurance to its employees in the past 12 months.~~

~~6. The contractor shall maintain such records as may be required by state law and regulation. The contractor shall furnish such required information to DMAS or to the Attorney General of Virginia or his authorized representatives on request and in the form requested.~~

~~7. The contractor shall ensure that the health care provided to its subscribers meets all applicable federal and state mandates and standards for quality.~~

~~C. DMAS shall monitor to determine if the contractor:~~

~~1. Imposes on subscribers premium amounts in excess of premiums permitted as outlined in the contract between the contractor and DMAS.~~

~~2. Misrepresents or falsifies information that it furnishes to DMAS, an individual, or any other entity.~~

~~D. If DMAS determines that a contractor is not in compliance with its program contract, DMAS may impose sanctions on the contractor. The sanctions may include but shall not be limited to:~~

~~1. Developing procedures with which the contractor must comply to eliminate specific noncompliance;~~

~~2. Freezing subsidy payments for new program applicants;~~

~~3. Imposing a fine if the contractor does not take steps to correct a problem in a timely fashion; and~~

~~4. Terminating the contractor's program contract.~~

~~E. When DMAS determines that a contractor committed one of the violations specified in subsection C of this section, DMAS shall consider imposing one or more of the sanctions listed in subsection D of this section. Any sanction imposed pursuant to subsection D of this section shall be binding upon the contractor. The contractor shall have the appeals rights for any sanction imposed pursuant to subsection D of this section as specified in 12VAC30-100-470.~~

12VAC30-100-440. Subscribers' employers. (Repealed.)

~~In order for their employees to be eligible for premium subsidies, employers must meet the following requirements and assume the following responsibilities:~~

~~1. Employers must be located in the geographical region covered by the pilot program.~~

~~2. Firms must be small employers (employ an average of at least two but not more than 50 employees on business days during the preceding calendar year and employ at least two employees on the first day of the plan year).~~

~~3. Employers shall provide assurances to the contractor that they have not offered health insurance to their employees to be covered in the 12 months preceding the application for their employees to the program.~~

~~4. Employers shall agree to pay either at least 50% of the cost of the health insurance premium for a single employee (an employee-only policy) or a different percentage agreed upon by the Director of DMAS in the appropriate contract and must agree to cover such costs for all employees.~~

~~5. Employers shall agree to withhold the employee's share of the premium payment from their pay, and to send the employee's and the employer's share of the premium payment to the contractor on a monthly basis.~~

~~6. A contractor may impose a minimum participation requirement for each firm before any employees of that firm receive coverage through the program.~~

12VAC30-100-450. Program reimbursement. (Repealed.)

~~A. The employer shall pay a minimum of either at least 50% of his employees' health insurance premiums or that amount specified in the applicable contract with DMAS but also may pay some portion of employees dependents' premiums. The subscriber shall pay up to a maximum of 25% for himself and up to a maximum of 50% for his dependents with the subsidy completing the balance.~~

~~B. Premium subsidy payments to cover the portion of the premium not paid by the employer and the employee will be made by DMAS to the contractor according to procedures established by DMAS. Payments under this program are limited to the cost of the health insurance premium subsidy and will not include copayments, deductibles, or any other costs incurred by the subscribers of the program.~~

~~C. In all cases in which program premium subsidies have been incorrectly paid to the contractor, the program shall seek recovery from the contractor according to the department's recovery policies. Likewise, the contractor shall seek recovery from the program for premium subsidies which have not been paid or have been incorrectly paid.~~

~~D. Cases of suspected misrepresentation or fraud shall be investigated according to the department's fraud prevention and control policies, and any other applicable statutory provision.~~

12VAC30-100-460. Confidentiality. (Repealed.)

~~All information maintained by DMAS containing personal data including name, address, employer, insurance company, health status, application to or enrollment in the program, and any other information which could identify or be reasonably used to identify any applicant or subscriber in the program shall be maintained in confidence according to all applicable DMAS policies and procedures and any other applicable laws or regulations. Such information may not be disclosed to any individual or organization without the written and dated consent of the applicant, subscriber, or subscriber's representative.~~

12VAC30-100-470. Appeals process. (Repealed.)

~~A. Appeals relating to disputes about eligibility for or payment of health insurance premium subsidies shall be managed by the department. All other subscriber appeals, grievances or complaints shall be managed by the contractor.~~

~~B. Subscriber appeals.~~

~~1. An applicant or subscriber who is dissatisfied with a decision, action, or inaction of the contractor with regard to the provision of medical services may request and shall be granted an opportunity to appeal an adverse decision to the contractor as provided for under 14VAC5-210-70 H.~~

~~2. An applicant, subscriber, or subscriber's representative may request and shall be granted an opportunity to appeal an adverse decision to DMAS when:~~

~~a. His application for health insurance premium subsidies is denied. However, if an application for premium subsidies is denied because of a lack of funds, then there shall be no right to appeal.~~

~~b. DMAS takes action or proposes to take action which will adversely affect, reduce, or terminate his receipt of premium subsidies.~~

~~c. DMAS does not act with reasonable promptness on his application for premium subsidies.~~

~~3. An applicant's, subscriber's, or subscriber representative's appeal to DMAS shall be heard as provided for under the applicable provisions of the department's appeals regulations (Part I of 12VAC30-110). The following listing of the sections of the department's appeals regulations indicates whether the provision is applicable to appeals heard under this program:~~

~~12VAC30-110-10~~	~~Applicable~~
~~12VAC30-110-20~~	~~Applicable~~
~~12VAC30-110-30~~	~~The federal regulations imposing a time limitation for appeals do not apply to this program. However, for this program, appeals shall be scheduled and conducted within 90 days, unless waived in writing by the appellant or appellant's representative.~~
~~12VAC30-110-40 through 12VAC30-110-80~~	~~Applicable~~
~~12VAC30-110-90~~	~~Not applicable. An applicant's right to appeal is stipulated in subdivision 2 of this subsection.~~
~~12VAC30-110-100 through 12VAC30-110-190~~	~~Applicable~~
~~12VAC30-110-200~~	~~Not applicable. Decisions or actions regarding the provision of medical services shall be appealed to the contractor.~~
~~12VAC30-110-210 A~~	~~Applicable~~
~~12VAC30-110-210 B~~	~~Not applicable if there is a right to appeal under subdivision 2 of this subsection.~~
~~12VAC30-110-220 through 12VAC30-110-350~~	~~Applicable~~
~~12VAC30-110-360~~	~~With the exception that subsection A, providing for an independent medical assessment, is not applicable to this program.~~
~~12VAC30-110-370~~	~~Applicable~~
~~12VAC30-110-380~~	~~Applicable~~

~~4. The following provisions shall apply to appeals by an applicant, subscriber or subscriber's representative to DMAS:~~

~~a. If an applicant is found eligible for the premium subsidy as a result of an appeal, the program shall reimburse the applicant directly for the premium subsidy amount paid by the applicant, beginning with a payment for the month following the application. The applicant shall provide proof of payment of premiums for health insurance.~~

~~b. Cases in or pending appeal shall be considered filled subscriber openings until the appeal process has been completed.~~

~~C. Employer appeals. An employer who is dissatisfied with a decision, action, or inaction of the contractor with regard to the firm's meeting the requirements of this part so that their employees may participate in the program, may request, and shall be granted an opportunity to appeal an adverse decision to the contractor. The contractor shall develop an appeals process to respond to complaints from employers. This appeals process shall follow the model for applicant appeals as provided for under 14VAC5-210-70.~~

~~D. Contractor appeals. In accordance with the terms of the contract, contractors shall have the right to appeal any adverse action taken by DMAS. For appeal procedures not addressed by the contract, the contractor shall proceed in accordance with the appeals provisions of the Virginia Public Procurement Act (B§ 11-35 et seq. of the Code of Virginia). Pursuant to B§B§ 11-70 and 11-71 of the Code of Virginia, DMAS establishes an administrative appeals procedure, which the contractor may elect to appeal decisions on disputes arising during the performance of its contract. Pursuant to B§ 11-71 of the Code of Virginia, such appeal shall be heard by a hearing officer; however, in no event shall the hearing officer be an employee of DMAS. In conducting the administrative appeal, the hearing officer shall follow the hearing procedure used in B§ 9-6.14:12 of the Code of Virginia.~~

12VAC30-100-480. ~~[Reserved].~~ <u>(Repealed.)</u>

12VAC30-100-490. Sunset provision. <u>(Repealed.)</u>

~~Program termination shall be two years after the date the program is implemented. If funding is not available or is depleted after implementation and before the two-year operation period ends, the program will terminate prior to the projected two-year period. If additional funding becomes available, the program may be extended as funding permits and as legislatively and administratively approved. Part IV (12VAC30-40-400 et seq.) of this chapter shall become inoperative upon program termination.~~