



Virginia
Regulatory
Town Hall

Exempt Action Final Regulation Agency Background Document

Agency Name:	Dept. of Medical Assistance Services (12 VAC 30)
VAC Chapter Number:	Chapter 50
Regulation Title:	Amount, Duration, and Scope of Services
Action Title:	Dental Services
Date:	April 18, 2002; Effective June 20, 2002

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provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed.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 final exempt regulatory action technically changes the amount, duration, and scope of covered dental services by expanding the pended claims review process currently in place to apply to non-urgent treatment, except comprehensive orthodontic care. Not having to obtain

prior authorization for non-urgent treatment services allows the dental provider flexibility to provide such services without having to go through the PA process.

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.

I hereby approve the foregoing Regulatory Review Summary with the attached amended State Plan pages and adopt the action stated therein. Because this final regulation is exempt from the public notice and comment requirements of the Administrative Process Act (*Code* § 2.2-4006), the Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

4/18/2002

/s/ Patrick W. Finnerty

Date

Patrick W. Finnerty, Director

Dept. of Medical Assistance Services

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.

The section of the State Plan that is affected by this exempt action is the Amount, Duration, and Scope of Services for dental services (Attachment 3.1-A&B (12VAC 30-50-190)).

The *Code of Federal Regulations*, at 42 CFR 440.260, requires Title XIX State Plans to include a description of methods and standards used to assure that services are of high quality. Prior authorization or prepayment review are just one of several different processes used by DMAS to assure that Virginia Medicaid recipients’ services are of high quality. Because both of these processes occur prior to the payment of claims, this change constitutes a non-substantive change consistent with the Virginia Administrative Process Act’s exemptions permitted by § 2.2-4006 (A)(2) and (A)(3).

Current State Plan policy requires a number of higher cost dental services to receive prior authorization before treatment can be rendered and reimbursed for recipients under age 21. An exception exists for such services, excluding comprehensive orthodontic treatment, to be performed in justified emergent/urgent situations. In those circumstances, the dental provider may render treatment, but must justify the medical necessity on or attached to the claim for payment. The providers' claims are pended for review by a dental consultant. The dental consultant applies the same criteria that are used in the prior authorization (PA) process to approve or deny the claim.

The Virginia General Assembly, over the past several sessions, has directed DMAS to work with the dental provider community to streamline its administrative processes and to remove impediments to the efficient delivery of dental services. Access to dental care under Virginia Medicaid remains a problem. Recent utilization statistics show a 24% recipient dental-utilization rate for fee-for-service (FFS) services. Self-reported data from HMOs indicate an average dental-utilization rate of about 27%. Increases in reimbursement for dental services over the last four years have helped retain some participating dentists; however, the increases in reimbursement alone have not had a lasting positive effect in attracting and keeping additional providers in the dental network. One of the biggest issues raised in dialogue with dental providers is the paperwork burden associated with DMAS' PA process that is not required by commercial carriers.

The recommended regulatory change in Section 10.C of the State Plan expands the pended claims review process currently in place to apply to non-urgent treatment, except comprehensive orthodontic care. Not having to obtain prior authorization for these services allows the dental provider flexibility to provide such services without having to go through the PA process. Prior to payment, the claims for the services rendered would be reviewed by the dental consultant to ensure that appropriate medical justification was established and utilization control purposes were satisfied.

Providers will have the option of continuing to request prior authorization before rendering treatment and submitting claims for payment.

In a January 18, 2001, HCFA (now CMS-Centers for Medicare and Medicaid Services) letter to State Medicaid Directors, CMS speaks to its concerns over low recipient dental utilization and its plans to provide intensive oversight reviews of states with less than a 30% dental utilization rate. One of CMS' main areas of concern addresses increased provider participation not directly related to provider reimbursement. CMS' strategies to increase provider participation include reducing prior authorization requirements and revising utilization controls to conform to those in the private sector, mirroring commercial insurance processes to the extent possible.

According to the CMS' Chief Dental Officer, some states have already made positive changes to their prior authorization processes and an even larger number of state Medicaid Programs are considering reducing such requirements and reforming their utilization review procedures.

The DMAS Dental Advisory Committee unanimously approved these recommended regulation changes and strongly recommended expediting their implementation. This suggested regulatory

action, to modify the prior authorization requirements to allow an expanded pended claims review process, is cost effective and streamlines utilization control. The changes are expected to be a win-win situation for all concerned parties between DMAS and its partner dentists in helping improve early access to needed dental care for Virginia Medicaid recipients.

The agency projects no negative issues involved in implementing this regulatory change. Also, there are no localities that are uniquely affected by these regulations as they apply statewide.

There is a potential annual saving of up to \$26,000 by removing most or all of this function under DMAS' contract with the prior authorization contractor. While some providers may wish to continue the prior authorization process, it is expected that most providers would welcome the recommended changes.

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.

The impact on families expected from this exempt regulatory action is the increase in the number of dental providers and therefore, a likely increase in access to dental care and an ease in the process of obtaining dental care. This action will have no impact on families' independence, 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, or the assumption of responsibility for recipients, their spouses, children, parents. This change will not strengthen or erode the marital commitment nor increase or decrease families' disposable incomes.