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Proposed Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation(s)	12VAC30-30-20, 12VAC30-50-130
Regulation title(s)	12VAC30-30-20. Optional groups other than the medically needy. 12VAC30-50-130. Skilled nursing facility services, EPSDT, school health services and family planning. Repeal 12VAC30-135-10 to 12VAC30-135-90. Family Planning Waiver
Action title	Plan First Family Planning Services (Optional Group)
Date this document prepared	August 10, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The purpose of this regulation is to move the Family Planning program from demonstration waiver regulations to state plan regulations in compliance with the state plan amendment approved by the Centers for Medicare and Medicaid Services (CMS) on September 22, 2011. This change modifies the income eligibility level for the program to the level that is currently approved by CMS (200% of the federal poverty level, or FPL). This regulatory change will protect the health, safety and welfare of the qualifying, low-income citizens of the

Commonwealth by covering medical family planning services. These services help to decrease unintended pregnancies and increase the spacing between births to promote healthier mothers and infants. Preventing unintended pregnancies has significant social and economic advantages, including savings in health care and social support service expenditures.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

CMS = Centers for Medicare and Medicaid Services.
DMAS = Department of Medical Assistance Services.
EPSDT = Early and Periodic Screening, Diagnosis and Treatment.
FAMIS = Family Access to Medical Insurance Security Plan.
FPL = Federal Poverty Level.
PPACA = Patient Protection and Affordable Care Act.
STIs = Sexually Transmitted Infections

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The *Code of Virginia* (1950) as amended, section 32.1-325, grants to the Board of Medical Assistance Services the authority to administer the Plan for Medical Assistance. The Code of Virginia (1950) as amended, section 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance when the Board is not in session, subject to such rules and regulations as may be prescribed by the Board. The Medicaid authority was established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a], which provides the governing authority for DMAS to administer the State's Medicaid system.

The Patient Protection and Affordable Care Act (Public Law 111-148) (PPACA), as amended by the Health Care and Education Recovery Act of 2010 (Public Law 111-152), contained section 2303 State Eligibility Option for Family Planning Services which established a new Medicaid eligibility group and the option for States to begin providing family planning services and supplies to individuals (both men and women) found to be eligible under this new group. Coverage of both of these services was previously only available under a demonstration project waiver for men and women not eligible for full Medicaid benefits.

Chapter 665 of the 2015 Acts of Assembly, Item 301.UU provided:

"The Department of Medical Assistance Services shall seek federal authority to move the family planning eligibility group from a demonstration waiver to the State Plan for Medical Assistance. The department shall seek approval of coverage under this new state plan option for individuals with income up to 200 percent of the federal poverty level. For the purposes of this section, family planning services shall not cover payment for abortion services and no funds shall be used to perform, assist, encourage or make direct referrals for abortions. The department shall have authority to implement necessary changes upon federal approval and prior to the completion of any regulatory process undertaken in order to effect such change."

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The Plan First program was initially covered by CMS as a demonstration waiver program and covered general family planning services for persons who could not qualify for full Medicaid eligibility. The covered services included: (i) examinations for both men and women for sexually transmitted diseases; (ii) birth control; (iii) cancer screenings for men and women, and; (iv) family planning education and counseling. Demonstration projects, regardless of their subject, create significant administrative costs and reporting requirements for Medicaid programs. In order to approve a demonstration grant for a state, CMS requires significant data reporting, formal evaluations, and periodic grant renewals. By converting this family planning service to the State Plan, as now permitted by PPACA, it relieves DMAS of these administrative costs and duties.

The purpose of this action is to move the waiver regulations into the state plan regulations which has no effect on the health, safety, or welfare of citizens. The increase of the income eligibility level will permit more individuals to receive services under this program. The advantage to the individuals who qualify for this service is the coverage of family planning services and examinations for sexually transmitted diseases.

There are no disadvantages to the public or the Commonwealth associated with the proposed regulatory action.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

The sections of the State Plan for Medical Assistance that are affected by this action are: 1) Groups Covered and Agencies Responsible for Eligibility Determination: Optional Groups

Other than the Medically Needy (12VAC30-30-20) and 2) Amount, Duration, and Scope of Medical and Remedial Care Services: Skilled Nursing Facility Services, EPSDT, School Health Services and Family Planning (12VAC30-50-130). Sections 12VAC30-135-10 to 12VAC30-135-90 are being repealed because the program is no longer operated as a demonstration project waiver.

The planned regulatory action makes three types of changes: (1) substantive changes required by CMS as a condition of the state plan amendment approval, (2) substantive changes to the income level approved by CMS; and (3) non-substantive editorial changes. In addition to moving this program out of demonstration waiver regulations and into state plan regulations, this action also increases the income level for eligibility, authorizes use of the DMAS Central Processing Unit or other contractor for determining eligibility (should DMAS determine that this is the most practicable approach), and clarifies that those individuals eligible for full-benefit coverage under Medicaid or FAMIS are not eligible under this program. The proposed regulatory action also authorizes coverage for additional (beyond initial) testing for sexually transmitted infections (STI) and newer methods of cervical cancer screening. These changes are designed to facilitate administration and update the services provided. In addition, this regulatory action includes non-substantive changes to selected language.

CURRENT POLICY

Current regulations treat individuals eligible for coverage under the Medicaid family planning option as a demonstration waiver versus the state plan option as approved by CMS. Under the demonstration waiver, the Commonwealth was allowed to waive certain limits for eligibility, including disallowing eligibility based on age, gender, having had a sterilization procedure or hysterectomy. The demonstration waiver also disallowed retroactive eligibility. These limitations were required by CMS as a condition of waiver approval. The current regulations also limit the income level for eligibility to 133% FPL.

Current regulations limit eligibility determination to local departments of social services and are unclear with regard to enrollment for persons eligible for Medicaid or FAMIS under a full-benefits category. Current regulations limit testing for sexually transmitted diseases (STDs) to the initial visit and restrict cervical cancer screening to the Pap test.

ISSUES

By meeting CMS requirements for continuation of the Family Planning program as a state plan service, the proposed regulatory action brings the regulations into compliance with the state plan amendment currently approved by CMS. This action assures that the eligibility rules for the state plan family planning option are consistent with those for full benefit Medicaid program. Raising the income level for eligibility makes the program consistent with the FAMIS MOMS program for pregnant women, and offers more men and women access to family planning services. Updating the clinical services available (STI testing and cervical cancer screening options) conforms to the present standard of care.

The Family Planning program is a benefit to qualified low income families by providing them with the means for obtaining medical family planning services to avoid unintended pregnancies and increase the spacing between births to help promote healthier mothers and infants.

The primary advantage of the Family Planning program to the Commonwealth is a cost savings to Medicaid for prenatal care, delivery, and infant care by preventing unintended pregnancies. According to the Virginia Department of Health’s Pregnancy Risk Assessment Monitoring System (2010), unintended pregnancy continues to occur at a high rate in Virginia, where 42% of all pregnancies are unintended across the Commonwealth. Of these unintended pregnancies, 31% were mistimed (women who reported they wanted to be pregnant later) and 11% were unwanted (women who reported they did not want the pregnancy then or in the future).

Family planning services do not cover abortion services or referrals for abortions. This regulatory action would not affect individuals younger than 19 years of age unless they are in the FAMIS income range but are not eligible for FAMIS because of having other creditable health insurance. The majority of individuals younger than 19 years of age would be eligible for full Medicaid or FAMIS benefits.

RECOMMENDATIONS

The intent of this action is to align Virginia policy with that afforded by federal law, and in doing so expand family planning options for individuals who would not otherwise qualify for Medicaid or FAMIS coverage.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary 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 indicate.

The primary advantage to the public is that more low-income women and men will have access to family planning services. This will support these individuals' efforts to better plan for pregnancy. It will also allow greater access to testing for STI and screening for cervical cancer.

The primary disadvantage to these individuals is that, by definition, this is a limited benefit program. Some individuals may not understand those limits as they apply for full Medicaid benefits or seek services that are not encompassed by this family planning program, requiring remedial education and redirection to more appropriate resources. A disadvantage of this program for providers is that they also do not understand this program's limits and, after failing to determine that their patient has limited available benefits, provide a full range of services only to have their claims denied.

There are no identified disadvantages to the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements that exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality is particularly affected by this regulation.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Joanne Boise, Maternal and Child Health Services Unit, Health Care Services Division, Department of Medical Assistance Services, 600 E. Broad St., Richmond, VA; joanne.boise@dmas.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>There are no projected costs, as this regulatory action is only changing under which authority the agency is providing the service.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There is no cost to localities from these regulations.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Individuals not eligible for full-benefit Medicaid or CHIP (FAMIS) who may benefit from family planning services. Physician practices serving the affected population are generally assumed to be small businesses.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are currently 105,000 individuals enrolled in the Family Planning Program. It is not known how many physician practices provide services to individuals in the Family Planning program.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>Physicians serving the affected population will continue to receive reimbursement for these services, contributing to income for those small businesses. The administrative costs resulting from this regulation are expected to be minimal. There are no costs related to the development of real estate.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Decrease in the number of unplanned pregnancies; decrease in the number of poor birth outcomes (premature births, low birth weight infants), and; decrease in the incidence of STIs.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The language for this regulatory action follows CMS requirements for program participation and no other alternative regulatory methods were identified that would accomplish the objectives of applicable law.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

This regulation will not create an adverse impact on small business.

Family Impact

Please assess the 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.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; nor 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. It does not strengthen or erode the marital commitment, and has no impact on disposable family income.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

DMAS submitted its Notice of Intended Regulatory Action (NOIRA) on May 29, 2015. It was published in the *Virginia Register* on June 29, 2015, to begin the thirty day comment period. The comment period ended July 29, 2015. No comments were received during the public comment period following publication of the NOIRA.

Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
12VAC30-30-20		The family planning option group is not part of this regulatory section.	The addition of the state plan family planning optional group with the income level specified as 200% of FPL (the same income standard for pregnant women). Services are defined in 12VAC30-50-130D.
12VAC30-50-130		Family planning services are not specifically defined in this regulatory section.	The addition of this section defines family planning services as established by section 1905 of the Social Security Act.
12VAC30-135-10 to 12VAC30-135-90		Defines family planning eligibility option under demonstration waiver authority.	Strike the waiver authority language.