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Exempt Action Final Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-30-10; 12 VAC 30-110-1620
Regulation title(s)	Mandatory Coverage: Categorically Needy and Other Required Special Groups; Special Eligible Groups
Action title	Former Out-of-State Foster Care Youth
Final agency action date	February 8, 2018
Date this document prepared	February 8, 2018

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, is encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

This action proposes updates to 12 VAC 30-30-10: "Mandatory Coverage: Categorically Needy and Other Required Special Groups" and adds a new section, 12 VAC 30-110-1620: "Coverage of Former Foster Care Youth."

Currently, language exists at 12 VAC 30-30-10 outlining Medicaid coverage for former foster care youth who aged out of care while receiving Medicaid in a state other than Virginia. Due to a recent review and decision made by the Centers for Medicare and Medicaid Services (CMS), this coverage is no longer available under the State Plan, but instead has been approved under an

1115 waiver. As a result, this language must be moved to the “state only” section of the VAC. The language has been moved to a previously reserved section of the VAC, 12 VAC 30-110-1620, which is now titled “Coverage of Former Foster Care Youth.”

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

I hereby approve the foregoing Agency Background Summary with the attached amended regulations entitled Former Foster Care Youth (12 VAC 30-30-10 and 12 VAC 30-110-1610) and adopt the action stated therein. I certify that this final exempt regulatory action has completed all the requirements of the Code of Virginia § 2.2-4006(A), of the Administrative Process Act.

February 8, 2018

/Jennifer S. Lee, M.D./

Date

Jennifer S. Lee, M.D., Director

Dept. of Medical Assistance Services

Legal basis

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

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

The changes within this action are made under a new CMS final rule: 81 FR 86382 (published November 30, 2016; effective January 20, 2017). These changes are being made in accordance with VA Code § 2.2-4006(A)(4)(c).

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.

DMAS obtained CMS approval to offer Medicaid coverage to former out-of-state foster care youth under the age of 26 starting July, 2014. In order to be eligible for this coverage, the individual would need to be not otherwise eligible for Medicaid coverage, and to have been on Medicaid and in foster care when they turned 18 years of age or aged out of foster care in a state other than Virginia.

After additional review, CMS has determined that this coverage was not permitted under the State Plan, and instead was permitted under an 1115 waiver. DMAS has submitted and received approval from CMS for this 1115 waiver. This action does not represent a change in coverage and former out-of-state foster care youth will continue to be eligible for Medicaid coverage as they have been since July 1, 2014.

Due to this change, CMS has requested that DMAS remove the State Plan language that established this coverage. This action will place the language into the state only section of the VAC and allow this population of former foster care youth to continue to receive Medicaid coverage in Virginia.