



Exempt Action Final Regulation Agency Background Document

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| Agency name | Department of Medical Assistance Services |
| Virginia Administrative Code (VAC) citation | 12 VAC 30, Chapter 135 |
| Regulation title | Demonstration Waiver Services – Family Planning Waiver |
| Action title | 2007 Family Planning Waiver Changes |
| Document preparation date | 4/19/07 |

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006(A) of the of the Administrative Process Act (APA) (townhall.state.va.us/dpbpages/dpb_apa.htm), the agency 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 (leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4100), the *Virginia Register Form, Style, and Procedure Manual* (legis.state.va.us/codecomm/register/download/styl8_95.rtf), and Executive Orders 21 (02) and 58 (99) (governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)

Summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

Item 302 CCC (1) of the 2007 Acts of Assembly directed the Department of Medical Assistance Services (DMAS) to promulgate regulations to specifically expand eligibility for Medicaid coverage of family planning waiver services to individuals with a family income up to 133 percent of the Federal Poverty Level. Under the current regulation, these waiver services are limited to women in this income group who have received a pregnancy-related service reimbursed by Medicaid and who are either pregnant or are less than 24 months postpartum.

Statement of agency final 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 Document with the attached amended regulations Family Planning Waiver (12 VAC 30-135-10; 30-135-20; 30-135-30; 30-135-80, and 30-135-40) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act and that these regulations are full, true, and correctly dated.

Date

Patrick W. Finnerty, Director

Dept. of Medical Assistance Services

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

The regulations that are affected by this action are the Family Planning Demonstration Waiver (12VAC 30-135-10; 12VAC 30-135-20; 12VAC 30-135-30, 12VAC 30-135-80, and 12 VAC 30-135-40).

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.

This action meets the exemption provided by the *Code of Virginia* §2.2 – 4006 (A) (4)(a) because it conforms these attached regulations to the requirements of Chapter 3, Item 302 CCC (1) of the *2007 Acts of Assembly* and does not materially differ. Additionally, the Agency has no discretion concerning the implementation of this mandated requirement.

Currently, under the Family Planning Waiver, DMAS provides specific services only to certain women: (i) who are ages 9-57 years; (ii) who are less than 24 months postpartum; (iii) who have received Medicaid-covered pregnancy and/or delivery services;(iv) who have incomes less than

or equal to 133% of the Federal Poverty Level, and; (v) who are not enrolled in any other Medicaid-covered group.

Item 302 CCC (1) of the 2007 Acts of Assembly directed the DMAS to expand eligibility for Medicaid coverage of family planning services to **individuals** *[emphasis added]* with a **family income** *[emphasis added]* up to 133 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.

These mandatory changes contained in this final-exempt regulatory action are: (i) removing the gender and age restrictions; (ii) removing the prior Medicaid-covered prenatal and/or delivery requirement; (iii) removing the requirement to be less than 24 months postpartum, and; (iv) clarifying that the income level (133% of the Federal Poverty Level) applies to family incomes and not just an individual’s income.

The specific changes are contained in the following table:

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change and rationale |
|--|--|--|---|
| 12VAC30-135-10 | | Defines “eligible family planning waiver recipient” in terms of pregnancy | Delete; no longer applicable |
| 12VAC30-135-10 | | Defines “pregnancy related service.” | Delete; no longer applicable |
| 12VAC30-135-20 12VAC30-135-30 12VAC30-135-80 | | References to eligible “women”. | Change “women” to “individuals.” |
| 12VAC30-135-20.C-E | | Defines eligibility and administrative processes for postpartum enrollment | Delete; no longer applicable. Eligibility is no longer limited to postpartum women |
| 12VAC30-135-30.A | | Defines eligibility in terms of a past Medicaid funded pregnancy and not being otherwise enrolled in Medicaid. | Defines eligibility based on general Medicaid requirements. Clarifies that eligibility is based on family income. Clarifies that individuals eligible for full Medicaid benefits, whether or not they are actually enrolled, are not eligible for enrollment in the waiver. |
| 12VAC30-135-30.B- | | Defines eligibility requirements for | Delete; no longer applicable. Eligibility is no longer limited to postpartum |

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|----------------|--|--|---|
| C | | postpartum enrollment. | women |
| 12VAC30-135-40 | | Coverage includes annual “gynecological” exams | Coverage includes annual “physical examinations. This change provides for annual family planning physical or gynecological examinations for all eligible individuals. The annual physical examination is a basic component of family planning services. |

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or 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, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.