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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	DEPT. OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation(s)	12 VAC30-50-190; 12 VAC30-141-820
Regulation title(s)	Amount, Duration, and Scope of Services for the Categorically Needy and Medically Needy: Dental Services; FAMIS MOMS Benefits
Action title	Dental services for Medicaid and FAMIS MOMS Pregnant Women
Date this document prepared	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to eighteen months), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation. 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 of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

Currently, the Department of Medical Assistance Services only covers dental services (12 VAC 30-50-190 and 42 CFR 440.100) for children as a required element of the Early and Periodic Screening, Diagnosis, and Treatment program (12 VAC 30-50-130(B) and 42 CFR 440.40(b)) and emergency dental care with the associated diagnostic tests for adults. This regulatory action adds pregnant women to the individuals who will be able to receive this service. With the

exception of not covering orthodontia for pregnant women, this action makes no other changes in the amount, duration, or scope of currently covered dental services.

Emergency Authority

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006. Please explain why this is an emergency situation as described above, and provide specific citations to the Code of Virginia or the Appropriation Act, if applicable.

Section 2.2-4011(A) of the *Code of Virginia* states that agencies may adopt regulations in emergency situations after the agency submits a written request stating the nature of the emergency and the Governor approves the action. This action qualifies as an emergency regulation pursuant to Code of Virginia § 2.2-4011(A) because the Agency has determined that these changes “are necessitated by an emergency situation.” On September 5, 2014, DMAS submitted a request to the Governor stating in writing the nature of this emergency and specifically requesting his authority pursuant to Virginia Code § 2.2-4011(A) to promulgate emergency regulations to address the emergency. In the letter, DMAS Director Cynthia B. Jones stated the following:

It has come to our attention that the lack of health insurance coverage for approximately one half of the population of the Commonwealth has created an urgent situation that necessitates the implementation of emergency regulations to speedily address the significant medical needs of Virginia’s uninsured population.

The lack of access to dental care for pregnant women enrolled in Virginia's Medicaid and FAMIS programs is the third health care risk DMAS seeks to address via regulatory action. Virginia has 45,000 pregnant women enrolled in Medicaid and FAMIS MOMS. Neither of these programs currently provides comprehensive dental care [for adults]. As a result, these women risk having dental health issues go undiagnosed and untreated, needlessly putting their [pregnancies] and unborn babies in jeopardy. A pregnant woman's oral health is linked to her delivery and her baby's health. In the absence of effective treatment, dental issues can become medical issues, leading to significantly greater costs [from pre-term deliveries and high neonatal costs].

In light of this situation, the Governor charged the Secretary of Health and Human Resources to create a plan to provide Virginians with greater access to health care for uninsured citizens. This emergency regulation is part of DMAS’ response to that directive.

The Governor is hereby requested to approve this agency’s adoption of the emergency regulations entitled GAP Dental Services for Pregnant Women (12 VAC 30-50-190 (Medicaid)

and 12 VAC 30-141-820 (FAMIS MOMS)) and also authorize the initiation of the regulation promulgation process provided for in § 2.2-4007 of the *Code*.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) the promulgating entity, i.e., agency, board, or person.

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.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

Under the current regulation, only Medicaid and FAMIS individuals younger than 21 years of age, in fulfillment of the treatment requirements under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program, and dental emergency coverage for adults, are provided dental services. These services are provided to these individuals so long as they are routine diagnostic, preventive, or restorative procedures necessary for oral health provided by or under the direct supervision of a dentist in accordance with the State Dental Practice Act.

Due to the need of pregnant women to receive dental care, the Governor gave DMAS emergency regulation authority to provide dental care for about 45,000 pregnant Medicaid and FAMIS MOMS women who already receive publicly funded Medicaid/FAMIS MOMS health care services. This action seeks to utilize the authority granted by the Governor to update the dental services regulation to allow the Department to carry out the Governor's directive.

Need

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Many low-income women go through their pregnancy without any examination to assess oral health needs. As a result, some of these women experience pain associated with oral pathology

as well as complications with their pregnancies. Evidence-based practice suggests that dental care during pregnancy is shown to be safe and effective in reducing periodontal disease and periodontal pathogens thereby contributing to safer pregnancies and healthy, full term infants. Periodontal care should be provided during pregnancy. Control of oral diseases in pregnant women has the potential to reduce the transmission of oral bacteria from mothers to their infants. The best available evidence to date shows that periodontal treatment is safe for the mother and fetus.

Substance

Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the healthy, safety, or welfare of Virginians.

The section of the State Plan for Medical Assistance that is affected by this action is the Amount, Duration, and Scope of Services for the Categorically Needy and the Medically Needy: Dental Services (12 VAC 30-50-190). The section of the FAMIS MOMS regulations that is being amended is Benefits (12 VAC 30-141-820).

Currently, DMAS covers routine dental services, through the *Smiles For Children* (SFC) program, only for children younger than 21 years of age. This is a required service by the Early and Periodic Screening, Diagnosis, and Treatment program (42 CFR 440.40(b) and 12 VAC 30-50-40(B)). The currently covered services are: diagnostic x-rays, exams; preventive cleanings; restorative fillings; endodontics (root canals); periodontics (gum related treatments); prosthodontics both removable and fixed (crowns, bridges, partials and dentures); oral surgery (extractions and other oral surgeries); and adjunctive general services (all covered services that do not fall into specific professional categories. The Department also covers emergency dental care, with the associated diagnostic tests, for adults.

ISSUES

Control of dental disease during pregnancy has been shown to have positive effect on the pregnancies' outcome. Both the American Congress of Obstetricians and Gynecologists (ACOG) and the American Dental Association (ADA) have published position papers supporting the need for and safety of oral health care during pregnancy.

RECOMMENDATIONS

In furtherance of the Governor's Healthy Virginia Plan, DMAS is working in concert with its dental benefits administrator, DentaQuest, to design an oral health program for pregnant women who are enrolled in Medicaid and FAMIS MOMS. The services are inclusive of those provided in Virginia's *Smiles For Children* (SFC) program, and similar in scope to dental services available through the Virginia Department of Human Resources dental benefits for state employees, with the exception that orthodontia services will not be covered.

Services for pregnant women will include the following: diagnostic x-rays, exams; preventive cleanings; restorative fillings; endodontics (root canals); periodontics (gum related treatment); prosthodontics both removable and fixed (crowns, bridges, partials and dentures); oral surgery (extractions and other oral surgeries); and adjunctive general services (all covered services that do not fall into specific professional categories). The appropriateness of particular services for an individual pregnant woman will be determined by the dental provider based on the term of the woman's pregnancy.

DMAS estimates that approximately 45,000 pregnant women will be eligible for this service. Based on the average per individual expenditure for dental services, DMAS estimates that this new coverage may cost approximately \$600,000 in SFY 2015 (beginning 3/1/15) and \$3.2 M in SFY 2016. The funds for this service derive from the General Fund and DMAS' claiming of federal matching funds.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, and likely impact of proposed requirements
12 VAC 30-50-190		Dental services are covered only for children younger than 21 years of age. Covered services include: preventive, restorative, oral surgery, periodontics, prosthodontics, orthodontics, etc. Emergency dental services for adults.	This action only adds to the existing regulation language permitting pregnant women to access all of these services, except for orthodontia, as determined appropriate by the dental provider.
12 VAC 30-141-820		Benefits for FAMIS MOMS	Reference to dental benefits, consistent with 12 VAC 30-50-190, is included.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The alternative to implementing coverage for pregnant women is that the dental services benefit would remain only available to children under EPSDT and adults with dental emergencies. If the current policy is maintained, pregnant women enrolled in Medicaid or FAMIS MOMS would not be eligible for a dental services benefit.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the

alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments. Please also indicate whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.

The agency is seeking comments on the regulation that will permanently replace this emergency regulation, including but not limited to 1) ideas to be considered in the development of the permanent replacement regulation, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) the potential impacts of the regulation.

The agency is also 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) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to: Myra Shook, Analyst, Division of Health Care Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219; (804-786-1567); (Fax 804-786-1680); Myra.Shook@dmas.virginia.gov

Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

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