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Final Regulation 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	February 26, 2016

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

In the past, the Department of Medical Assistance Services (DMAS) only covered comprehensive dental services including orthodontia (12 VAC 30-50-190 and 42 CFR 440.100) for individuals under the age of 19 who were covered through the Family Access to Medical Insurance Security (FAMIS) plan and for individuals up to the age of 21 as a required element of the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program (12 VAC 30-50-130(B) and 42 CFR 440.40(b)). Only emergency dental care with the associated diagnostic tests was covered for adults (ages 21 and older). With the exception of not covering orthodontia, an emergency regulatory action added adult pregnant women to the individuals able to receive full dental services deemed appropriate. This regulatory action seeks to make those changes

permanent. This action makes no other changes in the amount, duration, or scope of currently covered dental services.

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.

DMAS - Department of Medical Assistance Services
EPSDT - Early and Periodic Screening, Diagnosis and Treatment
FAMIS - Family Access to Medical Insurance Security

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 Regulatory Review Summary with the attached amended Virginia Administrative Code sections 12 VAC30-50-190 and 12 VAC30-141-820 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.

3/16/2016

/Signature/

Date

Cynthia B. Jones, Director

Dept. of Medical Assistance Services

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, § 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.

In addition, the 2015 Virginia Acts of Assembly, Chapter 665, Item 301, LLLL(2) provides that “The Department of Medical Assistance Services is authorized to amend the State Plan under Title XIX of the Social Security Act to add coverage for comprehensive dental services to pregnant women receiving services under the Medicaid program to include: (i) diagnostic, (ii) preventive, (iii) restorative, (iv) endodontics, (v) periodontics, (vi) prosthodontics both removable and fixed, (vii) oral surgery, and (viii) adjunctive general services.”

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.

Prior to this action, only those covered through FAMIS or those under the age of 21 who were covered through Medicaid were provided dental services. (Medically necessary oral surgery and related diagnostic services for adults were also provided.) Services are provided to individuals younger than 21 years of age as 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 approximately 45,000 adult pregnant women enrolled in Medicaid and FAMIS MOMS 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 continue carry out the Governor’s directive.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

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).

In the past, DMAS covered routine dental services through the *Smiles For Children* (SFC) program only for individuals younger than 21 years of age. Dental services are required by the FAMIS program (12 VAC 30-141-500 and 830) and by the EPSDT program (42 CFR 440.40(b) and 12 VAC 30-50-40(B)). The 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); orthodontia;

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 medically necessary for adults.

ISSUES AND RECOMMENDATIONS

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.

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 adult pregnant women who are enrolled in Medicaid and FAMIS MOMS. The service categories are inclusive of those provided in Virginia's *Smiles For Children* (SFC) program, and, in comparison, are similar in scope to dental services available through the Virginia Department of Human Resources dental benefits for state employees, with the exception of orthodontia services which will not be covered.

Services for adult pregnant women will include the following when deemed medically appropriate: 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 adult 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.

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.

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.

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 more restrictive than federal requirements contained in this action.

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.

There are no localities that are particularly affected by this action as it applies statewide.

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, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

No changes have been made to the regulatory text since the proposed stage.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

Commenter	Comment	Agency response
Healthcare Watchdogs	<p>"Totally Unjustified -politically motivated. This poilcy [sic] is 100% government pork. It is being pushed by nonprofit stakeholders for the purpose of trying to prove to their contributors that they are doing something to deserve their funding.. Their first target is low income pregnant [sic] women, because they know that words like pregnant, homeless, low income children are the standard words used to gain funding for their cause, the stakeholders existance.. [sic] Its the tried and true formula of exploiting a "needs" group for rasing money. [sic] Whats next, 401 savings accounts? Gym memberships? They will argue its improves [sic] prenatal health, but that is a very miniscule factor compared to drugs, alcohol, and tobacco."</p>	<p>Control of dental disease during pregnancy has been associated with positive effects on the pregnancy 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. It is expected that dental coverage during pregnancy may result in reduced costs over time, as healthier pregnancies result in healthier babies.</p>

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

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		<p>Dental services are covered only for children younger than 21 years of age. Covered services include: preventive, restorative, oral surgery, periodontics, prosthodontics,</p>	<p>Changes in emergency regulation: This action adds language permitting adult pregnant women to access all of these services, except for orthodontia, as determined appropriate by the dental provider.</p>

		<p>orthodontics, etc. Emergency dental services for adults.</p>	<p>In addition, this action clarifies that DMAS will provide any medically necessary dental service to individuals younger than 21 years of age, as well as which services for individuals under the age of 21 do not require preauthorization or prepayment review.</p> <p>Changes from emergency regulation to proposed stage: this section was re-organized at the request of the Centers for Medicare and Medicaid Services. The changes include:</p> <ul style="list-style-type: none"> • a new section (A)(1) was added stating that Virginia provides any medically necessary dental service to individuals younger than 21 years of age. • Re-numbering paragraph (B) as (A)(2) • Establishing a stand-alone paragraph in (A)(3) for individuals under the age of 21 to indicate what services do not require preauthorization or prepayment review. • Re-numbering paragraph (C) as (B). • Clarifying in paragraph (B) that dental benefits are permitted only for adult pregnant women, and only if they are medically necessary. • Also clarifying in paragraph (B) that dental benefits continue through the end of the month following the 60th day postpartum. • Renumbering paragraph (D) as (C). • Removing individuals under age 21 from the new paragraph (D) so that the limits based on medical necessity and utilization control apply only to adult pregnant women. • Renumbering paragraph (D) as (E).
<p>12 VAC 30-141-820</p>		<p>Benefits for FAMIS MOMS</p>	<p>Changes in emergency regulation: Reference to dental benefits, consistent with 12 VAC 30-50-190, is included.</p>