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

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC 30-50-190
VAC Chapter title(s)	Dental Services
Action title	Adult Dental
Date this document prepared	June 22, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

DMAS is adding language to the Virginia Administrative Code to implement a comprehensive dental benefit for adults in accordance with a mandate from the General Assembly.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CDC = Centers for Disease Control

CMS = Centers for Medicare and Medicaid Services
DMAS = Department of Medical Assistance Services

Mandate and Impetus (Necessity for Emergency)

Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:

a) *Indicate whether the Governor's Office has already approved the use of emergency regulatory authority for this regulatory change.*
b) *Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change

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The 2020 Appropriations Act, Item 313.IIIII states, "Effective July 1, 2021, the Department of Medical Assistance Services shall have the authority to amend the State Plan of Medical Assistance under Title XIX of the Social Security Act to provide a comprehensive dental benefit to adults…The department shall have authority to promulgate emergency regulations to implement these changes within 280 days or less from the enactment date of this act. "

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts and Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Code of Virginia § 32.1 325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations. The Code of Virginia § 32.1-324, grants the Director of the Department of Medical Assistance Services the authority of the Board when it is not in session.

Item 313.IIII in the 2020 Appropriations Act requires DMAS to provide a comprehensive dental benefit to adults, effective July 1, 2021. DMAS received CMS approval for a state plan amendment to implement these changes on June 14, 2021.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

This regulation is essential to protect the health, safety, and welfare of citizens in that it will enable adult Medicaid members to receive dental services. There is a great deal of medical

research indicating that poor dental health leads to poor health outcomes. According to the Centers for Disease Control (CDC), poor oral health is associated with chronic diseases such as diabetes and heart disease. By covering dental services for adult Medicaid members, it is expected that overall health will improve in the adult Medicaid population.

Substance

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.

DMAS added language to the state plan to implement a comprehensive dental benefit for adults. The chart below provides more detail about the coverage and limitations that will be included in the state plan.

Adult Dental Benefit	
Covered Services	**Limitations**
Exams, Routine cleanings, X-rays	Non-routine X-rays such as imaging and cone beam technology require prior authorization.
Fillings and crowns	Crowns are only covered when a root canal is done while the member is under the adult dental program. Bridges are not covered.
Root canals Pulpal Debridement	Endodontic retreatment, apexification and apicoectomy are not covered
Scaling and Root Planing Gingivectomies Periodontal maintenance procedure	Periodontal flap procedures, crown lengthening procedures, and bone replacement grafts are not covered.
Dentures, Partials, and Repair procedures	Partials are covered only as a part of a definitive treatment plan.
Extractions Alveoplasty	Oral antral fistulation procedures, closures of sinus perforations and dislocation and management of TMJ dysfunctions are not covered. Surgery necessitated by trauma is not covered. Implants are not covered.
Anesthesia Services	Non-anesthesia services may require prior authorization.

As directed by the General Assembly, DMAS worked with its Dental Advisory Committee, including members of the Virginia Dental Association, the Old Dominion Dental Society, the Virginia Health Catalyst, the Virginia Commonwealth University School of Dentistry, the Virginia Dental Hygienists Association, the Virginia Health Care Association, a representative of the developmental and intellectual disability community, the Virginia Department of Health and the administrator of the Smiles for Children program to develop this benefit.

The benefit is modeled after the existing benefit for pregnant women, and includes preventive and restorative services but not cosmetic or orthodontic services.

DMAS has worked with its dental benefit administrator, the Virginia Dental Association, the Old Dominion Dental Society, the Virginia Association of Free and Charitable Clinics, the Virginia Community Healthcare Association and other stakeholders to ensure an adequate network of providers and awareness among beneficiaries.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

There primary advantages to the public are the health improvements resulting from dental care among the adult Medicaid population. There are no disadvantages to the public, the agency, or the Commonwealth.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

No alternatives would meet the General Assembly mandate.

Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

DMAS is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: https://townhall.virginia.gov. Comments may also be submitted by mail, email or fax to Emily McClellan, DMAS, 600 Broad Street, Richmond, VA 23219, (804) 371-4300, or Emily.McClellan@dmas.virginia.gov 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 the proposed stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
12 VAC 30-50-190		Adult dental benefits are not covered	Paragraph B: The words "age 21 and older" were added to the first sentence of paragraph B to clarify the difference in coverage provided under paragraph A. In addition, the word "bridges" was removed because these were not covered under the dental benefit for pregnant women and this error is being corrected. The general term "and other oral surgeries" was changed to the more specific "biopsies, alveoloplasty" in order to match the language that CMS required DMAS to include in the state plan. Paragraph C: The wording in the first and second sentences was combined for sake of clarity. In addition, the service limits were corrected to match the coverage that is (and has been) in place for pregnant women. Orthodontics to include space maintenance and tooth guidance appliances is not a covered benefit for adults. Neither patient education nor sealants are covered benefits for adults. The word "extractions" was removed because there is no limit on extractions.

			A new paragraph D is added to cover dental services for Medicaid adults. Old paragraphs D is now paragraph E. Old paragraph E is now paragraph F.