



Fast Track Proposed Regulation Agency Background Document

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| Agency name | DEPT OF MEDICAL ASSISTANCE SERVICES |
| Virginia Administrative Code (VAC) citation | 12 VAC 30 -40-10 12 VAC 30-110-1300 |
| Regulation title | Eligibility Conditions and Requirements |
| Action title | Coverage of legal immigrant children |
| Date this document prepared | |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

This regulatory action moves the statement of coverage of certain groups of lawfully residing non-citizen children from state-only regulations to the State Plan for Medical Assistance. The effect of this change will be to permit the Commonwealth to claim Federal Financial Participation (FFP or federal Medicaid matching dollars) for the covered services used by these groups of eligible persons. Currently, the medical services used by these groups of eligible persons are being funded with 100% General Funds.

Additionally, this action will provide for full benefit Medicaid coverage for certain groups of lawfully residing non-citizen children who currently are eligible only for federally mandated Medicaid coverage of emergency services.

The Department expects no measurable change in the number of persons who are found to be eligible in these groups.

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 document with the attached amended State Plan pages, General Conditions of Eligibility (12VAC 30-40-10), 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.

Date

Patrick W. Finnerty, 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 law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

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 explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail 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.

The purpose of this action is to promulgate State Plan regulations that will provide for continued Medicaid coverage of lawfully residing non-citizen children (legal immigrant children) under the age of 19 and enable the Commonwealth to receive Federal Financial Participation (FFP) for

providing such coverage. Action will also be taken to repeal state-only regulations currently in effect that provide coverage for two groups of legal immigrants using State-only General Fund money.

Additionally, this action will serve to promulgate State Plan regulations to provide for full benefit Medicaid coverage for certain groups of lawfully residing non-citizen children under the age of 19 who are currently eligible for federally mandated Medicaid coverage of emergency services only.

The Department does not expect that this regulatory action will measurably increase or decrease the numbers of persons who qualify for these groups.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The fast track process is being utilized to promulgate this change in regulatory language as it is expected to be a non-controversial amendment to existing regulations. This regulatory action will allow DMAS to claim FFP for medical services for lawfully admitted non-citizen children under the age of 19 who are currently being paid for using State-only General Funds.

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.)

The section of the State Plan for Medical Assistance that is affected by this action is Attachment 2.6-A Eligibility Conditions and Requirements (12VAC 30-40-10). The state-only regulation that is affected by this action is Medicaid Eligibility for Aliens (12VAC 30-110-1300).

Item 322.V of the 1997 *Acts of Assembly* Chapter 924 directed DMAS to provide coverage to lawfully admitted non-citizen children under the age of 19 at the Commonwealth's expense if FFP could not be obtained. Federal reimbursement was not available at the time because these children did not meet the alien criteria established through P.L. 104-193 (The Personal Responsibility and Work Opportunity Reconciliation Act of 1996).

Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) now provides an option for States to cover certain groups of lawfully residing non-citizens and receive FFP for providing coverage. Virginia is electing to provide coverage under Medicaid to children under the age of 19 who meet the criteria set out in CHIPRA.

Additionally, regulations at 12VAC 30-110-1300 are being repealed as they will no longer be applicable with the adoption of new language (as set out in 12VAC30-40-10) to cover these children under Medicaid and receive federal financial participation.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, which was enacted on August 22, 1996, substantially changed the Medicaid entitlements for non-citizens. Section 431 of the Act defined "qualified aliens" for the purposes of determining eligibility for public benefits, including Medicaid. Section 401 of the Act provided that aliens who were not "qualified aliens" were not eligible for full coverage under the Medicaid program, although they may be eligible for federally mandated coverage of an emergency medical service.

In an effort to comply with the federal law and avoid disruption in medical services for two vulnerable groups of legal aliens who had resided in the United States prior to the enactment of the new law and who would not be able to meet the new requirements, Chapter 924 of the 1997 *Acts of Assembly* (Item 322 V) directed DMAS to promulgate regulations to implement the federal policy and to continue to provide medical assistance to elderly individuals receiving an institutional level of care and children younger than 19 years of age.

All aliens receiving Medicaid and residing in long-term institutional facilities or participating in home and community based waivers who were eligible for full Medicaid benefits on June 30, 1997, continued to be eligible for full Medicaid benefits beginning July 1, 1997, at state expense because federal financial participation was not available. Further, in order to continue medical services to immigrant children, Item 322.V, of the 1997 Appropriations Act directed DMAS to provide full medical assistance to non-citizens ineligible for Medicaid because of their alien status pursuant to P.L.104-193, who were under the age of 19 and would be eligible for full Medicaid benefits if the alien requirements prior to the passage of P.L. 104-193 were still in effect. Coverage of these children was provided at state expense, as well, because federal financial participation was not available.

Since that time, DMAS has continued to provide coverage to these two groups of individuals at state expense. The group of elderly individuals residing in long-term institutional facilities or participating in home and community based waivers was a fixed group of individuals receiving coverage as of June 30, 1997. There is no further need for state coverage of this group as all individuals have expired. Therefore, action will be taken with this regulatory change to repeal language requiring the State to provide coverage to this group of individuals at State expense.

DMAS continues to provide coverage at state expense to the group of lawfully admitted non-citizen children under the age of 19 who would be eligible for full Medicaid benefits if the alien requirements prior to the passage of P.L. 104-193 were still in effect. This regulatory action will allow for FFP for coverage of this group of children.

As a result of the option allowed under CHIPRA, DMAS is electing, through this regulatory change, to receive FFP for services currently provided using State General Funds. In addition to the children listed in the first paragraph of 12 VAC 30-40-10(3)(e), DMAS is also including in the covered children list the groups of children listed in 3(e)(i) through 3(e)(iii), as the federal Medicaid authority (the Centers for Medicare and Medicaid Services) is requiring the addition of these groups as mandated under CHIPRA.

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.*

There is no disadvantage to the public or the Commonwealth with the adoption of this regulation. Adoption of this regulation will result in the Medicaid program receiving FFP for coverage of some of these children as they are currently covered at state expense.

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 in this proposal that are more restrictive than federal requirements

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.

No localities are particularly affected by this change as implementation is statewide.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for

small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There is no adverse impact on small business. There are no alternative regulatory methods to accomplish the objectives.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

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| Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures | No new cost to the Commonwealth. Coverage of these children (approximately 1,400 individuals for each year) is already in place. This action allows for receipt of federal financial participation for coverage of this group of children and is a cost-savings to the Commonwealth. DMAS projects that for each SFY 2010 and 2011, the expenditures will be (\$700,451 (GF)) and \$700,451 NGF. |
| Projected cost of the regulation on localities | None |
| Description of the individuals, businesses or other entities likely to be affected by the regulation | None |
| Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. | None |
| All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. | None |

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

There are no viable alternatives to this proposal. Absent adoption of this proposal, the Commonwealth will continue to expend all General Funds to cover this group of lawfully admitted non-citizen children.

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; 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. These changes are a cost-savings to the Commonwealth.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change and rationale |
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| 12VAC30-40-10 | | N/A | 3.e. provides for Medicaid coverage of certain lawfully residing non-citizen children under the age of 19 as required under CHIPRA |
| 12VAC 30-110-1300 | | Requires coverage of certain aliens and immigrants at state expense | Repealed. |