



Proposed Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30, Chapters 50, 120 and 141
Regulation title	Amount, Duration and Scope of Services: Dental Service; Family Access to Medical Insurance Security Plan
Action title	Smiles for Children Dental Program
Document preparation date	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

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

This proposed regulatory action combines two previous, separate emergency regulatory actions. The previous emergency actions addressed the carve out of dental services from managed care in the Medicaid and Family Access To Medical Insurance Security (FAMIS) programs, and the reorganization of the prior authorization of dental services. This current proposed regulatory package implements changes in these two areas of dental services in order to create a new dental program for Medicaid and FAMIS enrollees, known as Smiles for Children. The first component carves dental services for children out of managed care in both Medicaid and FAMIS, making all dental services reimbursed on a fee-for-service basis. The second component reshapes the prior authorization (PA) regimen for dental services in order to bring the Medicaid and FAMIS dental PA system more in line with commercial insurance. The purpose of these changes is to increase utilization of and access to dental services for Medicaid and FAMIS enrollees.

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 Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe 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. With regard to the changes in the FAMIS regulations contained in this package, the Code of Virginia (1950) as amended, § 32.1-351, grants to the BMAS the authority to administer and amend the Title XXI Plan (FAMIS). The Code of Virginia (1950) as amended, § 32.1-351(K), authorizes the Director of DMAS to “adopt, promulgate and enforce such regulations pursuant to the Administrative Process Act (§ 2.2-400 et. seq.) as may be necessary for the implementation and administration of the Family Access to Medical Insurance Security Plan.”

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this regulatory action is to reshape the prior authorization regimen for dental services. Currently, the majority of dental services require prior authorization or pre-payment review. These regulations will lead to fewer prior authorization requirements and enhance access to dental services for pediatric Medicaid recipients and for participants in the Family Access to Medical Insurance Security (FAMIS) program.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)

The sections of the State Plan for Medical Assistance that are affected by this change are: Amount, Duration and Scope of Services – Dental Services (12 VAC 30-50-190), Waivered Services: Medallion II (12 VAC 30-120-380) and Family Access to Medical Insurance Security Plan (12 VAC 30-141-200, and –500).

12 VAC 30-50-190 describes Medicaid dental services. This section contains a list of dental services that require prior authorization. Because DMAS is restructuring the prior authorization of these services, this list was deleted. Other aspects of this section were changed to reflect change in the prior authorization regimen. 12 VAC 30-120-380 contains the list of services for which managed care organizations are not responsible because these services are reimbursed directly by DMAS. This section is amended to include dental services in the list of services reimbursed directly by DMAS. 12 VAC 30-141-200 describes the benefit packages available within the Title XXI FAMIS program. This section is revised to note that services directly reimbursed by DMAS include dental services, school health services and community mental health services. It should be noted that other changes are currently being made to subsection 30-141-200 via a separate regulatory process concerning a new FAMIS subprogram entitled "FAMIS Select." Finally, 12 VAC 30-141-500 addresses FAMIS benefits reimbursement; this section currently contains no description of the prior authorization of dental services. This proposed regulation adds a sentence that prior authorization for dental services in FAMIS will match the PA of dental services in the Medicaid program.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

Inadequate dental care access and low utilization of dental services by Medicaid/FAMIS clients continues to be a critical concern for the Department of Medical Assistance Services (DMAS). In fiscal year 2004, only about 25% of the 420,000 children enrolled received services. In response, DMAS has restructured the way that dental benefits are administered through a new dental program known as Smiles For Children.

Dental services are a mandatory Medicaid benefit for children under age 21. Section 1902(a)(43) of the Social Security Act specifically requires that State Medicaid plans provide or arrange for such services. Covered services are defined as any medically necessary diagnostic, preventive, restorative, and surgical procedures, as well as orthodontic procedures, administered by, or under the direct supervision of, a dentist. Dental services are currently covered for approximately 358,000 Medicaid children. Approximately 230,000 of these children receive care through managed care organizations (MCOs). Approximately 128,000 of these children receive dental care through the Department's fee-for-service (FFS) program. In addition, dental services also are provided to approximately 68,000 children enrolled in the Family Access to Medical Insurance Security (FAMIS) program. Most of these children are enrolled in an MCO.

The Department contracts with eight MCOs for the provision of most covered services for Medicaid/FAMIS children under the Medallion II program. Prior to the Smiles For Children Program, the MCOs handled the provision of dental services as part of the benefit package

administered under the Medallion II Contract. As directed in the 2005 Appropriations Act, DMAS consolidated the administration of dental services under a single dental benefits administrator, and carved-out the dental benefit from the MCO benefit package.

DMAS is paying the dental benefits administrator approximately 4.3 million under an Administrative Services Only (ASO) Contract to administer the program, with the state covering the cost of the actual claims by pass-through payment to Doral. Because the MCOs no longer oversee enrollee dental benefits, payments to them were reduced proportionately and redirected to cover Doral contract costs. The State also expects to avoid costs associated with medical treatment stemming from poor dental hygiene and lack of dental treatment by providing access to timely and appropriate dental care.

The primary goal of Smiles For Children, is to increase access and utilization of dental services. In order to do this, dental provider participation needs to improve. Previously only 16% of Virginia-licensed dentists participated in the Medicaid and FAMIS programs. The new Smiles For Children program addresses the top concerns as expressed by dental providers about the prior program. Among those concerns include the need to streamline the administrative processes and increase provider rates. These regulations allow dental services to be carved out of the MCO contracts for streamlined administration under a single vendor administrator. Additionally, these regulations will further reduce barriers to provider participation by allowing for the removal of unnecessary prior authorization requirements. There are no disadvantages to the public or the Commonwealth with these regulation changes.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

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	The State expects this change to be budget neutral.
Projected cost of the regulation on localities	The State does not expect this change to have any costs associated with it for localities.
Description of the individuals, businesses or other entities likely to be affected by the regulation	Medicaid and FAMIS recipients under age 21 (who receive full dental benefits) and those adults needing medically necessary oral surgery services (the only services available to adult Medicaid recipients), dentists who are Medicaid providers, and managed care organizations.
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	Approximately 420,000 children Approximately 200,000 adults 5 MCOs; and 700 dental providers.

<p>owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Approximately 700 dental providers and 5 MCOs are small businesses.</p>
<p>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.</p>	<p>The state does not expect this change to have any increased costs associated with it for recipients and providers. The State expects the change to be budget neutral for the MCOs.</p>

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.

With regard to the decision to carve dental services out from managed care, the only two choices available were to keep the current system of dental services provided by individual fee-for-service providers and by managed care dental programs, or to make the provision of all dental services more uniform by bringing all dental services within the fee-for-service structure. If the services were all brought under fee-for-service, the Agency had to consider whether to maintain the administration of dental benefits “in-house” or to contract out that task to an outside vendor. DMAS consulted with several groups representing the interests of dental providers and, with their input, concluded that the use of an outside dental benefits administrator was the best option to ensure that Medicaid and FAMIS dental services would most closely mirror the dental services commercially available.

DMAS’ current prior authorization regimen for dental services also figured into this decision. The Agency choose to move the administration of dental services from a completely “in-house” operation to a dental benefits administrator (DBA). As part of an effort to enhance and expand Medicaid dental services, DMAS reviewed its prior authorization structure. This proposed regulation will implement an updated prior authorization regimen crafted by DMAS’ dental benefits administrator to more closely match commercial dental preauthorization schedules. Many alternatives existed, as DMAS reconsidered the requirements for each covered dental service. Ultimately the Department decided to utilize the commercial expertise of its dental benefits administrator to fashion a prior authorization program that is in line with the prior authorization schedules utilized by commercial dental insurance.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

No comments were received during the public comment period concerning either previous emergency regulation.

Family impact

Please assess the impact of the proposed 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 and is not expected to affect disposable family income.

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.

Except for 12 VAC 30-50-190(E), all changes noted in the chart below were made in the previous emergency regulation and are being carried forward in the proposed regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC30-50-190 (B)		List of dental services that do not require prior authorization.	This section is being deleted.
12 VAC30-50-190 (C)	12 VAC30-50-190 (B)	Notation that all services not described in 30-50-190(B) require prior authorization.	Changed to “ All covered dental services not referenced above <u>Certain dental services as described in Agency guidance documents</u> require preauthorization or prepayment review by the state agency or its designee.”
12 VAC30-50-190 (E)	12 VAC30-50-190 (D)	Limited oral surgery procedures require preauthorization.	“Limited oral surgery procedures, as defined and covered under Title XVIII (Medicare), and described in Agency guidance documents.... ” The Agency is deleting this new language that was added to the emergency

			regulation to avoid any implication that DMAS may change or add coverage for dental services through agency guidance documents. Please note: this is a change from the emergency regulation.
12 VAC30-120-380(A)(2)		Medallion II MCO responsibilities: list of services reimbursed directly by DMAS.	This section is revised to add <u>“dental and orthodontic services for children up to age 21; for all others, dental services as described in 12 VAC 30-50-190”</u> to the list of services directly reimbursed by DMAS.
12 VAC30-141-200(A)		Commonwealth's Title XXI State Plan utilizes two benefit packages within FAMIS.	This section is revised as follows: <u>“MCHIPs. Managed Care Entities. Services directly reimbursed by DMAS include dental and orthodontic services for children up to age 19, school health services, and community mental health rehabilitative services.”</u>
12 VAC30-141-500		FAMIS Benefits reimbursement – no mention of dental prior authorization	States that dental services for FAMIS prior authorization will match prior authorization program in effect for Title XIX