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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation(s)	12VAC30-30-20, 12VAC30-50-130
Regulation title(s)	12VAC30-30-20. Optional groups other than the medically needy. 12VAC30-50-130. Skilled nursing facility services, EPSDT, school health services and family planning. Repeal 12VAC30-135-10 to 12VAC30-135-90. Family Planning Waiver
Action title	Plan First Family Planning Services (Optional Group)
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 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

The sections of the State Plan for Medical Assistance that are affected by this action are the Groups Covered and Agencies Responsible for Eligibility Determination (12VAC30-20-20) and the Skilled nursing facility services, EPSDT, school health services and family planning (12VAC30-50-130). Sections 12VAC30-135-10 to 12VAC30-135-90 are being repealed because the program is no longer operated as a demonstration project waiver.

Demonstration projects, regardless of their subject, create significant administrative costs and reporting requirements for Medicaid programs. In order to approve a demonstration grant for a state, CMS requires significant data reporting, formal evaluations, and periodic grant renewals. By converting this family planning service to the State Plan, as now permitted by PPACA, it relieves DMAS of these costs and duties.

The proposed action (i) increases the income level for eligibility, (ii) authorizes use of the DMAS Central Processing Unit or other contractor for determining eligibility, should DMAS determine that this is the most practicable approach, and (iii) clarifies that those individuals eligible for full-benefit coverage under Medicaid or FAMIS are not eligible under this program. The proposed regulatory action also authorizes coverage for additional (beyond initial) testing for sexually transmitted infections (STI) and newer methods of cervical cancer screening. These changes are designed to facilitate administration and update the services provided to current medical standards. In addition, this regulatory action addresses non-substantive changes to selected language.

Family planning services do not cover abortion services or referrals for abortions. This regulatory action would not affect individuals younger than 19 years of age unless they are in the FAMIS income range but are not eligible for FAMIS. The majority of individuals younger than 19 years of age would be eligible for full Medicaid or FAMIS benefits.

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, section 32.1-325, grants to the Board of Medical Assistance Services the authority to administer the Plan for Medical Assistance. The Code of Virginia (1950) as amended, section 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance when the Board is not in session, subject to such rules and regulations as may be prescribed by the Board. The Medicaid authority was established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a], which provides the governing authority for DMAS to administer the State's Medicaid system.

The Patient Protection and Affordable Care Act (Public Law 111-148) (PPACA), as amended by the Health Care and Education Recovery Act of 2010 (Public Law 111-152), contained section 2303 State Eligibility Option for Family Planning Services which established a new Medicaid eligibility group and the option for states to begin providing family planning services and supplies to individuals (both men and women) found to be eligible under this new group. Coverage of both of these services was previously only available under a demonstration project waiver for men and women not eligible for full Medicaid benefits.

Chapter 602 of the *2014 Acts of the Assembly*, Item 301 UU provided:

“The Department of Medical Assistance Services shall seek federal authority to move the family planning eligibility group from a demonstration waiver to the State Plan for Medical Assistance. The department shall seek approval of coverage under this new state plan option for individuals with income up to 200 percent of the federal poverty level. For the purposes of this section, family planning services shall not cover payment for abortion services and no funds shall be used to perform, assist, encourage or make direct referrals for abortions. The department shall have authority to implement necessary changes upon federal approval and prior to the completion of any regulatory process undertaken in order to effect such change.”

This regulatory action conforms the *State Plan for Medical Assistance* and the parallel *Virginia Administrative Code* sections with this statutory mandate, pursuant to the *Code of Virginia* § 2.2-4006(A)(4)(a).

Purpose

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, please explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of this action is to change this program from a demonstration waiver to the state plan option to be in compliance with the state plan amendment approved by the Centers for Medicare and Medicaid Services (CMS) September 22, 2011. This change will also bring the income eligibility federal poverty level (FPL) to that which is currently approved by CMS (200% FPL). This regulatory change will protect the health, safety and welfare by providing qualified low income individuals and families the means for obtaining medical family planning services. These services help to increase the intendedness of pregnancies and increase the spacing between births to help promote healthier mothers and infants. Preventing unintended pregnancies has significant social and economic advantages, including savings in health care and social support service expenditures.

This action will not affect other citizens who are not eligible for Medicaid or FAMIS.

Substance

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

This action will affect the following State Plan sections as well as state-only regulations: Groups Covered and Agencies Responsible for Eligibility Determination (12 VAC 30-20-20); the Amount, Duration, and Scope section for skilled nursing facility services, Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), and family planning services (12 VAC 30-50-

130), and; Family Planning waiver regulations (12 VAC 30-135-10 through 12 VAC 30-135-90 (to be repealed).

The planned regulatory action makes three types of changes: (i) substantive changes required by CMS as a condition of the state plan amendment approval, (ii) substantive changes to the income level approved by CMS; and (iii) non-substantive editorial changes.

CURRENT POLICY

Current regulations treat individuals eligible for coverage under the Medicaid family planning option as a demonstration waiver versus the state plan option as approved by CMS. Under the demonstration waiver, the State was allowed to waive certain limits for eligibility, such as disallowing waiver eligibility based on the individual's age, gender, or whether the individual had already had a sterilization procedure or hysterectomy. The demonstration waiver also disallowed retroactive eligibility. These limitations were required by CMS as a condition of waiver approval. The current regulations also limited the income level for eligibility to 133% FPL.

Current regulations limited eligibility determination to local departments of social services and are unclear with regard to enrollment for persons eligible for Medicaid or FAMIS under a full-benefits category. Current regulations limited testing for sexually transmitted diseases (STDs) to only an initial visit and restricted cervical cancer screening to only the Pap test.

ISSUES

By meeting CMS requirements for continuation of the Family Planning program as a state plan covered service, the proposed regulatory action brings the regulations into compliance with the state plan amendment currently approved by CMS. This action assures that the eligibility rules for the state plan family planning service are consistent with those for full benefit Medicaid program. Raising the income level for eligibility makes the program consistent with the FAMIS MOMS program for pregnant women, and offers more men and women access to family planning services. Updating the clinical services available (STI testing and cervical cancer screening options) conforms to the present standard of medical care.

The Family Planning program is a benefit to qualified low income families by providing them with the means for obtaining medical family planning services to avoid unintended pregnancies and increase the spacing between births to promote healthier mothers and infants. Increasing spacing between pregnancies enables infants to be healthier and reduces the likelihood that they will require very expensive and long term neonatal care.

The primary advantage of the Family Planning program to the Commonwealth is a cost savings to Medicaid for prenatal care, delivery, and infant care by preventing unintended pregnancies and delaying planned pregnancies. According to the Virginia Department of Health's Pregnancy Risk Assessment Monitoring System (2010), unintended pregnancy continues to occur at a high rate in Virginia, where 42% of all pregnancies are unintended. Of these unintended pregnancies, 31% were mistimed (women who reported they wanted to be pregnant later) and 11% were unwanted (women who reported they either didn't want the pregnancy then or in the future) .

The Guttmacher Institute estimates a savings of \$7.09 for every \$1 in public funds spent for family planning services.

There are no disadvantages to the public or the Commonwealth associated with the proposed regulatory action.

RECOMMENDATIONS

The intent of this action is to align Virginia policy with that afforded by the changes in federal laws, and in doing so expand family planning options for individuals who would not otherwise qualify for Medicaid or FAMIS coverage.

Current Section Number	Proposed new section number, if applicable	Current requirement	Proposed change, intent and likely impact of proposed requirements
12VAC30-30-20		The family planning option group is not part of this regulatory section.	The addition of the state plan family planning optional group with the income level specified as equivalent to the highest income level for pregnant women. Services are defined in 12VAC30-50-130D.
12VAC30-50-130		Family planning services are not specifically defined in this regulatory section.	The addition of this section defines family planning services as established by section 1905 of the Social Security Act.
12VAC30-135-10 to 12VAC30-135-90		Defines family planning eligibility option under demonstration waiver authority.	Strike the waiver authority language.

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 requirements that exceed applicable federal requirements. No locality is particularly affected by this proposed regulation as these changes will apply statewide.

There is no adverse impact on small businesses. The language for this regulatory action follows CMS requirements for program participation and no other alternative regulatory methods were identified that would accomplish the objectives of applicable law.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including 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 hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and 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: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and 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 Ashley Harrell, 600 East Broad Street, Richmond Virginia 23219; (804) 371-7824; (804) 786-6134; fax-(804) 612-0043; ashley.harrell@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.