



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: BRIAN MCCORMICK
Regulatory Supervisor
Department of Medical Assistance Services

FROM: MARY-GRACE MENDOZA *MM*
Assistant Attorney General

DATE: December 28, 2012

SUBJECT: Exempt Action - Coverage of Smoking Cessation Services for Pregnant Women (12 VAC 30-50-20 and 12 VAC 30-50-60)

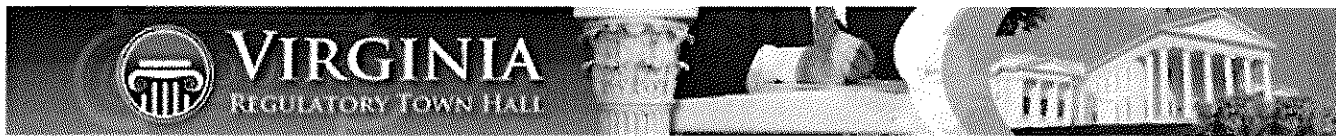
This memorandum responds to your request that this Office review the amendments to 12 VAC 30-50-20 and 12 VAC 30-50-60, "Coverage of Smoking Cessation Services for Pregnant Women," which provide Medicaid coverage of comprehensive tobacco cessation services for pregnant women, including both counseling and pharmacotherapy, without the imposition of cost sharing (co-payments) charges.

Based on my review, it is this Office's view that DMAS has the authority, subject to compliance with the provisions of Article 2 of the Administrative Process Act (APA), and has not exceeded that authority.

The change to the regulation is required by Section 4107 of the Patient Protection and Affordable Care Act ("PPACA") (P.L. 11-148), which mandated Medicaid coverage of comprehensive tobacco cessation services for pregnant women. The changes to 12 VAC 30-50-20 and 12 VAC 30-50-60 do not differ materially from those required by federal law or regulation. Accordingly, it is my view that this action was properly promulgated as an exempt action pursuant to Va. Code § 2.2-4006(A)(4)(c).

Please call me at (804) 786-6004 if you have any questions regarding this memorandum. Thank you.

cc: Kim F. Piner
Chief/Senior Assistant Attorney General



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Final Text

Action: Smoking Cessation Services for Pregnant Women

Stage: Final

12/10/12 10:35 AM [latest] ▾

12VAC30-50-20

12VAC30-50-20. Services provided to the categorically needy without limitation.

The following services as described in Part III (12VAC30-50-100 et seq.) of this chapter are provided to the categorically needy without limitation:

1. Nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.
2. Services for individuals age 65 or over in institutions for mental diseases: inpatient hospital services; skilled nursing facility services; and services in an intermediate care facility.
3. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined, in accordance with § 1902(a)(31)(A) of the Act, to be in need of such care, including such services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions.
4. Hospice care (in accordance with § 1905(o) of the Act).
5. Any other medical care and any type of remedial care recognized under state law, specified by the Secretary: care and services provided in religious nonmedical health care institutions; nursing facility services for patients under 21 years of age; emergency hospital services.
6. Private health insurance premiums, coinsurance and deductibles when cost effective (pursuant to P.L. 101-508 § 4402).
7. Program of All-Inclusive Care for the Elderly (PACE) services are provided for eligible individuals as an optional State Plan service for categorically needy individuals without limitation.

8. Pursuant to PL 111-148 § 4107, counseling and pharmacotherapy for cessation of tobacco use by pregnant women shall be covered. Counseling and pharmacotherapy for cessation of tobacco use by pregnant women means diagnostic, therapy, and counseling services and pharmacotherapy (including the coverage of prescription and non-prescription tobacco cessation agents approved by the Food and Drug Administration) for cessation of tobacco use by pregnant women who use tobacco products or who are being treated for tobacco use that is furnished: (i) by or under the supervision of a physician; (ii) by any other health care professional who is legally authorized to furnish such services under State law and who is authorized to provide Medicaid coverable services other than tobacco cessation services; or (iii) any other health care professional legally authorized to provide tobacco cessation services under State law and who is specifically designated by the U.S. Secretary of Health and Human Services in federal regulations.

(b) No cost sharing shall be applied to these services. (In addition to other services that are covered for pregnant women, 12 VAC 30-50-510 also provides for other smoking cessation services that are covered for pregnant women.)

12VAC30-50-60

12VAC30-50-60. Services provided to all medically needy groups without limitations.

Services as described in Part III (12VAC30-50-100 et seq.) of this chapter are provided to all medically needy groups without limitations.

1. Nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.
2. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.
3. Pursuant to PL 111-148 § 4107, counseling and pharmacotherapy for cessation of tobacco use by pregnant women shall be covered. Counseling and pharmacotherapy for cessation of tobacco use by pregnant women means diagnostic, therapy, and counseling services and pharmacotherapy (including the coverage of prescription and non-prescription tobacco cessation agents approved by the Food and Drug Administration) for cessation of tobacco use by pregnant women who use tobacco products or who are being treated for tobacco use that is furnished: (i) by or under the supervision of a physician; (ii) by any other health care professional who is legally authorized to furnish such services under State law and who is authorized to provide Medicaid coverable services other than tobacco cessation services; or (iii) any other health care professional legally authorized to provide tobacco cessation services under State law and who is specifically designated by the U.S. Secretary of Health and Human Services in federal regulations.
- (b) No cost sharing shall be applied to these services. (In addition to other services that are covered for pregnant women, 12 VAC 30-50-510 also provides for other smoking cessation services that are covered for pregnant women.)
4. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined in accordance with § 1905(a)(4)(A) of the Act to be in need of such care.
5. Hospice care (in accordance with § 1905(o) of the Act).
6. Any other medical care or any other type of remedial care recognized under state law, specified by the secretary, including: care and services provided in religious nonmedical health care institutions; skilled nursing facility services for patients under 21 years of age; and emergency hospital services.
7. Private health insurance premiums, coinsurance and deductibles when cost effective (pursuant to P.L. 101-508 § 4402).
8. Program of All-Inclusive Care for the Elderly (PACE) services are provided for eligible individuals as an optional State Plan service for medically needy individuals without limitation.