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Exempt Action Final Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-50-190
Regulation title(s)	Dental Services
Action title	Limit Dental Services for NF Residents
Final agency action date	
Date this document prepared	May 14, 2018

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, is encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

This action proposes to limit the amount of routine dental services that residents of nursing facilities are permitted to use to modify their patient pay amounts. Medicaid residents of nursing facilities (NF) are required by federal and state law to contribute towards the costs of their institutional care. At the same time, they are also allowed to use their incomes to purchase health care services that Medicaid does not cover for them, such as routine dental services (routine examinations, cleanings, and x-rays). When a NF resident needs routine dental services, they are allowed to reduce the amount of their contribution towards their NF care in order to reimburse their dental services provider.

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 Summary with the attached amended regulations entitled Limit Dental Services for NF Residents (12 VAC 30-50-190) and adopt the action stated therein. I certify that this final exempt regulatory action has completed all the requirements of the Code of Virginia § 2.2-4006(A), of the Administrative Process Act.

April 16, 2018

/Jennifer S. Lee, M.D./

Date

Jennifer S. Lee, M.D., 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 citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

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.

The 2018 *Acts of the Assembly*, Chapter 2, Item 303.NN, states that "The Department of Medical Assistance Services shall amend its State Plan under Title XIX of the Social Security Act to implement reasonable restrictions on the amount of incurred dental expenses allowed as a deduction from income for nursing facility residents. Such limitations shall include: (i) that routine exams and x-rays, and dental cleaning shall be limited to twice yearly; (ii) full mouth x-rays shall be limited to once every three years; and (iii) deductions for extractions and fillings shall be permitted only if medically necessary as determined by the department."

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.) Please be sure to define any acronyms.

Individuals who have been determined to meet the medical, nursing, and functional criteria for admission to a nursing facility are required to contribute to the costs of their institutional care. Local departments of social services, when evaluating an individual's financial resources and commitments, determine the amount of the individual's contribution towards his institutional care. DMAS pays the balance due to the nursing facility. The individual's contribution is known as 'patient pay'.

Federal law (42 CFR 435.725(c)(4)(ii)) requires that institutionalized individuals who contribute to their costs of institutional care be permitted to reduce their 'patient pay' amounts by the amount of expenses incurred for medical and dental services that Medicaid does not cover. This patient pay modification process is handled by local departments of social services. In instances when an individual's patient pay amount is reduced, DMAS is notified of the modification so it can increase its payment amount to the nursing facility. In other words, DMAS makes up for the resident's reduction amount in the amount paid to the nursing facility.

Under the current State Plan, there are limits on the amount of medical and dental services that an individual may obtain.

DMAS has been made aware that a small number of dentists have called on individuals in nursing facilities and have provided dental procedures with a frequency in excess of routine American Dental Association recommendations and also in excess of the existing limits in the State Plan's coverage for dental services.

RECOMMENDATIONS

DMAS recommends the attached service limits for dental services rendered to individuals in nursing facilities. DMAS recommends that (i) routine exams, x-rays, and dental cleanings be limited to twice yearly; (ii) full mouth x-rays be limited to once every three years, and; (iii) deductions for extractions and fillings be permitted only if medically necessary as authorized. These recommended limits are the same as the existing limits for dental services in the Plan.

Authorizations for other dental procedures, such as dentures, remain unchanged by this policy recommendation. Nursing facility residents will still be able to secure these additional services with the appropriate modifications to their patient pay amounts as is currently permitted.

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; nor 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, or decrease disposable family income.