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## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	DEPT. OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation(s)</b>	12 VAC 30-50-610
<b>Regulation title(s)</b>	Alternative Benefit Plan: Medicaid Expansion
<b>Action title</b>	Expansion-Related Changes: Alternative Benefit Plan
<b>Date this document prepared</b>	November 8, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This regulatory action incorporates changes made to the Virginia State Plan in order to implement Medicaid expansion. Specifically, this action includes the alternative benefit plan (ABP) that is available to individuals who are covered by Medicaid expansion. The Centers for Medicare and Medicaid Services (CMS) requires state Medicaid agencies to create an ABP for expansion populations. The changes included in this regulatory action have already been reviewed and approved by CMS.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.*

ABP = Alternative Benefit Plan

CMS = Centers for Medicare and Medicaid Services

DMAS = Department of Medical Assistance Services

### Mandate and Impetus (Necessity for Emergency)

*Please explain why this rulemaking is an emergency situation in accordance with Virginia Code § 2.2-4011 A and B. In doing so, please either:*

- a) *Indicate whether the Governor’s Office has already approved the use of emergency regulatory authority for this regulatory change.*
- b) *Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

*As required by § 2.2-4011, please also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change.*

Section 2.2-4011 of the *Code of Virginia* states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006(A)(4).

The 2018 *Acts of the Assembly*, Chapter 2, Item 303.SS 4a directed the agency to “amend the State Plan for Medical Assistance ... to implement coverage for newly eligible individuals...” Item 303.4f states that DMAS “shall have the authority to promulgate emergency regulations to implement these changes within 280 days or less ...” The changes in this regulatory action were submitted to CMS as a state plan amendment and were approved; they are a required part of Medicaid expansion.

The Governor is hereby requested to approve this agency’s adoption of the emergency regulations and also authorize the initiation of the promulgation process provided for in § 2.2-4007.

### Legal Basis

*Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must 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 or promulgating entity’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 and to promulgate regulations. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance and to promulgate regulations

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.

Section 2.2-4011 of the *Code of Virginia* states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006(A)(4).

The 2018 *Acts of the Assembly*, Chapter 2, Item 303.4a directed the agency to “ amend the State Plan for Medical Assistance ... to implement coverage for newly eligible individuals...” Item 303.4f states that DMAS “shall have the authority to promulgate emergency regulations to implement these changes within 280 days or less ...”

**Purpose**

*Please describe the specific reasons why the agency has determined that this regulation 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 regulation is to incorporate the CMS-approved Medicaid expansion ABP into the Virginia Administrative Code. This regulation is essential to protect the health, safety, and welfare of citizens in that it implements the General Assembly mandate to expand Medicaid coverage to new populations.

**Substance**

*Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of Virginians.*

The regulatory changes related to the CMS-approved ABP are contained in a new section, 12 VAC 30-50-610.

The changes describe how the ABP was developed, the essential health benefits that were reviewed, the benefits-related assurances Virginia makes to CMS, how the ABP will use both managed care and fee-for-service delivery systems, how the ABP interacts with the Health Insurance Premium Payment program and cost sharing; and the general assurances that Virginia makes to CMS.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
	12 VAC 30-50-610		A – Describes the ABP. B – Describes the documents Virginia reviewed in developing the ABP. C – Describes essential health benefits.

			<p>D – Describes benefit assurances that Virginia makes to CMS.</p> <p>E – The ABP will use both managed care and fee-for-service delivery systems.</p> <p>F – Interaction with Health Insurance Premium Payment program.</p> <p>G – Interaction with cost-sharing.</p> <p>H – Describes general assurances that Virginia makes to CMS.</p>
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### Issues

*Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

The primary advantage of this regulatory action is that additional individuals will have access to comprehensive health insurance, which should help improve health measures and outcomes across the Commonwealth. There are no disadvantages to the agency or the public.

### Alternatives

*Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

No alternatives will meet the requirements of the legislative mandate. These changes have already been approved by CMS and added to the Virginia state plan. This regulatory action seeks to replicate these changes in the Virginia Administrative Code.

### Periodic Review and Small Business Impact Review Announcement

*If you wish to use this regulatory action to conduct, and this Emergency/NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency.*

This NOIRA is not being used to announce a periodic review or a small business impact review.

### Public Participation

*Please indicate whether the agency is seeking comments on this regulation, including ideas to assist the agency in the development of the regulation and the costs and benefits of the alternatives stated in this notice or other alternatives.*

*Also, indicate whether a public meeting is to be held to receive comments. Please also indicate whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.*

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The agency is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Emily McClellan, DMAS, 600 E. Broad Street, Richmond, VA 23219; [Emily.McClellan@dmass.virginia.gov](mailto:Emily.McClellan@dmass.virginia.gov); or 804-371-4300. In order to be considered, comments must be received by 11:59 pm 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.