Virginia Regulatory Town Hall

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Fast Track Proposed Regulation
Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-135
Regulation title	Demonstration Waiver Services
Action title	Family Planning Waiver Modifications
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 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

This planned regulatory action modifies eligibility requirements for Medicaid coverage of family planning services under the Family Planning Demonstration Waiver to conform to conditions of approval by the Centers for Medicare and Medicaid Services (CMS) for continuation of the waiver.

Family planning services do not cover abortion services or referrals for abortions. This regulatory action would not affect individuals under 19 years of age. They would continue to be enrolled for full Medicaid or FAMIS benefits.

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 Document with the attached amended regulations (Family Planning Waiver) 12 VAC30-135-10, 20, 30, 40, and 70),
and adopt the action stated therein. I certify that this fast track regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act and is full, true, and correctly dated.

Date

Patrick W. Finnerty, 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 law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

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 (Medicaid State Plan) according to the Board's requirements. 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.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this amended regulation is to implement the eligibility requirements of CMS for continuation of this waiver program. This regulatory change will protect the health, safety and welfare of the citizens of the Commonwealth by providing qualified families with low income the means for obtaining medical family planning services. These services help to prevent unintended pregnancies and space intended pregnancies for healthier mothers and children.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

DMAS is using the fast track process because this action is mandated by CMS. This Fast Track regulation is non-controversial because the changes represent requirements that must be in effect in order to receive CMS approval for continuation of this waiver program.

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.)

The sections of the State Plan for Medical Assistance that are affected by this action are Demonstration Waiver Services (12 VAC 30-135-10, 20, 30, 40, and 70).

The planned regulatory action makes three types of changes: (1) substantive changes required by CMS as a condition of waiver approval; (2) substantive changes to facilitate administration and update the program of services; and (3) non-substantive editorial changes.

Current regulations treat individuals applying for coverage under the Medicaid Family Planning Waiver similarly to other Medicaid applicants with regard to creditable health coverage, timing of eligibility redeterminations, and retroactive eligibility. The planned regulatory action stipulates that individuals who have creditable health coverage or who have received a sterilization procedure or hysterectomy are ineligible for services under the Family Planning Waiver. It also disallows retroactive eligibility. These limitations are required by CMS as a condition of waiver approval.

Current regulations limit 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. The planned regulatory action 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 clarifies that those individuals eligible for full-benefit coverage under Medicaid or FAMIS are not eligible under the waiver. Current regulations limit testing for sexually transmitted diseases (STDs) to the initial visit and restrict cervical cancer screening to the Pap test. The planned regulatory action authorizes coverage for additional SDT testing and

newer methods of cervical cancer screening. These changes are designed to facilitate administration and update the program of services.

In addition, the planned regulatory action makes non-substantive changes to subsections 10, 40, and 70.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

By meeting CMS requirements for continuation of the Family Planning Waiver program, the proposed regulatory action is an advantage to qualified families with low income by providing them with the means for obtaining medical family planning services to prevent unintended pregnancies and space intended pregnancies for healthier mothers and children.

The primary advantage of the Family Planning Waiver program to the Commonwealth is a cost savings to Medicaid for prenatal care, delivery, and infant care by preventing unintended pregnancies. The Guttmacher Institute estimates a savings of $3 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.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements that exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality is particularly affected by this proposed regulation.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

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.

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 additional costs to implement and enforce the proposed regulatory changes are negligible.
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	None
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 owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	None
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.	None

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.

No viable alternatives to the proposal were identified. The eligibility modifications are required by CMS as a condition of approval for continuing the Family Planning Waiver program.

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.

The proposed regulatory action will encourage the assumption of responsibility by providing families with low income means to prevent unintended pregnancies and space intended pregnancies for healthier mothers and children. This regulatory action will have no negative affects on the institution of the family or family stability. It will not increase or decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, or the assumption of family responsibilities

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.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-135-10		Defines "FDA."	Deletes definition of "FDA". Proposed changes revise 12VAC30-135-40.A.4. to make this definition unnecessary. Defines "FAMIS." Defines "creditable health coverage"

12VAC30-135-20.B		Local departments of social services determine eligibility.	Allows DMAS to contract with the Central Process Unit or another entity to determine eligibility.
12VAC30-135-30.A		Limits eligibility to individuals with family income less than or equal to 133% of the federal poverty level.	Excludes from eligibility individuals with creditable health coverage. This is a requirement of CMS. Clarifies that individuals eligible for Medicaid in a full benefit coverage group or for FAMIS will not be enrolled under this waiver. Family planning is a covered service under FAMIS.
	12VAC30-135-30.B		Excludes from eligibility individuals who have received a sterilization procedure or hysterectomy. These individuals do not need family planning services. This is a requirement of CMS.
	12VAC30-135-30.C		Prohibits retroactive eligibility. This is a requirement of CMS.
12VAC30-135-30.B	12VAC30-135-30.D		Adds receipt of a sterilization procedure or hysterectomy as reason for termination from enrollment under the waiver. This is a requirement of CMS. Clarifies that individuals who become eligible for full- benefit coverage under Medicaid or FAMIS may be terminated from the waiver without 10 days prior notice.
12VAC30-135-40.A.1		Limits coverage of testing for sexually transmitted diseases (STD) to the initial family planning encounter. Provides coverage for Pap tests, the current standard method of screening for cervical cancer.	Removes the limit on STD testing. Standard family planning practice calls for additional STD testing in some circumstances. Provides coverage for cervical cancer screening tests. This change would to allow DMAS the option of covering a newer test in the future, if appropriate.
12VAC30-135-40.A.4		"FDA"	Spells out "Food and Drug Administration," here rather than defining the abbreviation in 12VAC30-135-10.
12VAC30-135-40.A.6	12VAC30-135-70.C.	Stipulates the consent form requirement for sterilization procedures.	Relocate the consent form requirement to 12VAC30-135-70 because it relates to reimbursement.