REGULATORY REVIEW SUMMARY

Amendment to the Plan for Medical Assistance

I. IDENTIFICATION INFORMATION

Title of Final Regulation: Virginia Children's Medical Security Insurance Plan

Director's Adoption: August 24, 1999

Public Comment Period: May 10 - July 9, 1999

Proposed Effective Date: October 23, 1999

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II. SYNOPSIS

Basis and 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 the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Director approved, on April 8, 1999, the initiation of a public comment period for the proposed regulations. The Code, in §9-6.14:7.1 et seq., requires agencies to adopt and

amend regulations subject to public notice and comment when the action being taken does not meet one of the statutory exemptions.

Subtitle J of the federal Balanced Budget Act of 1997, signed into law by the President in August, 1997, established the State Children's Health Insurance Program for the purpose of providing health care services to children, younger than age 19, in families which have incomes up to 200 percent of the Federal Poverty Level. This new Title XXI enabled states to initiate and expand health insurance coverage for uninsured children (under age 19) with incomes up to 200 percent of the poverty line who are not eligible for Medicaid (services under Title XIX of the *Social Security Act*).

Purpose: The purpose of this proposal is to promulgate permanent regulations to provide for health insurance coverage for children in poor families, as enabled by the Balanced Budget Act of 1997, Subtitle J. Such health insurance coverage will only be provided to children who do not have such coverage.

Substance and Analysis: The sections of the State Children's Health Insurance Program affected by this action are the Virginia Children's Medical Security Insurance Program (VCMSIP or CMSIP) (12 VAC 30 Chapter 140).

This program provides enhanced federal matching funds for these services and the 1998 match rate for the Commonwealth is 66 percent compared to the regular Medicaid federal dollar match rate of 51.5 percent. In order to access the enhanced federal matching funds, the Commonwealth has developed a separate health insurance program, Virginia Children's Medical Security Insurance Plan (VCMSIP), that is consistent with the requirements of the federal legislation.

The federal legislation appropriated $24 billion in matching funds over five years ($48 billion over ten years) and included a formula for individual state allocations. Virginia's allocation for FFY 1998 will be $68.7 million with similar amounts in each of the three succeeding years. In order to receive federal money, the Commonwealth must have a Title XXI State Plan approved by the U.S. Secretary (the Secretary) of Health and Human Services. The Secretary approved the Commonwealth's Plan on October 23, 1998.

Title XXI provided broad options to the states to implement a child health insurance program: to expand Medicaid, to create a separate health insurance program or to choose a combination of the two approaches. Whatever the states' initial decisions, the federal law permits future changes or additions.

By electing to create a separate program rather than expanding the Title XIX Medicaid program, the Commonwealth has greater flexibility to design its program within the broad parameters established in the federal legislation. The benefit package, however, was required to be similar to or of equivalent value to one of three commercial "benchmarks." Benchmark plans are the standard Blue Cross Blue Shield preferred

provider option under the Federal Employees Health Benefits Plan, a health benefits coverage plan generally available to State employees or an HMO plan with the largest insured commercial, non-Medicaid enrollment.

Virginia's Title XXI Plan, the VCMSIP created a program to cover uninsured low-income children ages 0 through 18 who are not eligible for Title XIX Medicaid services. Virginia's Plan consists of two components, (i) child health insurance for children in families with incomes up to 150 percent of the federal poverty level and (ii) child health insurance for children in families with incomes between 150 percent and 185 percent of the federal poverty level. These regulations provide new health care coverage for children in poor families whose incomes preclude their qualifying for Medicaid (under Title XIX) health care coverage. The health care services provided by these new regulations will almost mirror the health care coverage provided to Medicaid eligible persons.

VCMSIP covers an array of preventive, diagnostic, treatment, and rehabilitative services for eligible children. The VCMSIP service coverage matches the services covered under Medicaid such as, inpatient and outpatient hospital, physician, pharmacy, home health, clinic services, etc. In addition, CMSIP coverage includes outpatient substance abuse services not covered under Medicaid. The same benefit limits apply to VCMSIP covered services as those applied to Medicaid covered services.
An applicant for or enrollee of the Virginia Children's Medical Security Insurance Plan may request an administrative review of any adverse action proposed or taken by the agency. The regulations specify when the agency must send the notice of adverse action and specify when and how the applicant or enrollee must request administrative review. The regulations state that administrative reviews will be conducted pursuant to written procedures developed by DMAS and that a copy of these procedures will be promptly mailed by DMAS to applicants or enrollees upon DMAS' receipt of a timely request for administrative review.

Reimbursement for all covered services provided to VCMSIP recipients is to be based on the Title XIX rates (Medicaid rates) in effect on the date of services after July 1st of each year for the subsequent State Fiscal Year. For services provided by the following providers payment is to be final and there is to be no retrospective cost settlement: (i) inpatient acute care hospitals; (ii) inpatient rehabilitation hospitals; (iii) outpatient hospitals; (iv) Federally Qualified Health Centers; (v) rural health clinics; (vi) inpatient mental health units of acute care hospitals; (vii) outpatient rehabilitation agencies. Reimbursement to hospitals shall not include payments made for disproportionate share or graduate medical education.

Reimbursement for outpatient substance abuse services will be based on rates determined for children ages 6-18 and there will no retrospective cost settlement of payments.

Quality assurance is absolutely essential to the delivery of health care services. For the managed care and fee-for-service programs serving CMSIP clients, comprehensive

quality assurance measures are in place at DMAS and include external and professional quality review. Additional standards and oversights are also being developed at the Virginia Department of Health to ensure appropriate quality care for clients in managed care settings.

Cost-sharing provisions will be established. Eligible children of families with incomes above 150% of the Federal Poverty Income Guidelines will be required to contribute to the cost of VCMSIP coverage through payment of enrollment fees, premiums, deductibles, co-insurance or copayments, as permitted under Title XXI. The following restrictions will be placed on such cost-sharing: (i) total annual cost-sharing by a family will be limited to 5% of gross family income; (ii) cost-sharing will not be permitted for well-baby and well-child care, including age-appropriate immunizations.

The differences in these final adopted regulations and the previously proposed regulations have resulted from public comments received and are as follows: (i) definitions of terms used in the regulations have been either modified or added; (ii) in the Administrative Review section, reference has been added to DMAS' designee and the information requirements for appeal decisions have been set out; (iii) in the Covered Benefits section, provider qualifications for outpatient substance abuse treatment services have been modified to correctly reflect the appropriate licensing or certifying organization.

Issues: These regulations are essential to the efficient and economical performance of DMAS administration of this new program. Without these regulations, DMAS lacks the authority to expend the General Fund dollars necessary to claim the federal matching funds provided by federal law. The agency projects no negative issues involved in implementing this proposed change.

Summary of Public Comments Received: DMAS' proposed regulations were published in the May 10, 1999, Virginia Register for their public comment period from May 10 through July 9, 1999. Comments were received from 14 organizations, three individuals, and four members of the Virginia General Assembly.

A few comments were received after the close of the comment period and therefore, could not be included in the summary and agency response. However, since the late comments essentially repeated the same issues and positions as the other comments received, the issues raised in the late comments have been in effect addressed. A summary of the comments received and the agency's response are attached separately.

Fiscal/Budget Impact: The 1998 Virginia Acts of Assembly Chapter 464 Item U (1) - (4) appropriated $16,590,698 in FY 1999 for the VCMSIP program ($4,779,912 in GF and Special Funds) and $42,137,569 total funds ($14,292,496 in GF and Special Funds) in FY 2000. In addition, DMAS received additional funding for Title XIX Medicaid for a projected increase in Medicaid enrollment as a result of outreach for VCMSIP. It is estimated that 31,600 children will enroll in the VCMSIP program by the end of the first year of operation with enrollment reaching 50,560 by the end of the second year and

63,200 when the program reaches maturity. There are no localities that are uniquely affected by these regulations as they apply statewide.

Funding Source/Cost to Localities/Affected Entities: The Department of Medical Assistance Services is established under the authority of Title XIX of the federal Social Security Act, Public Law 89-97, as amended; and Title 32.1, Chapter 10, of the *Code of Virginia*. The Virginia Medicaid Program is funded with both federal and state funds. The current federal funding participation (FFP) for medical assistance expenditures is 51.60%, which became effective October 1, 1998. It is estimated that this rate will increase to 51.77% on October 1, 1999. However, under the terms of the Balanced Budget Act of 1997, the FFP for the CMSIP equals the Federal Medical Assistance Percentage (FMAP) plus 30% of the state's portion of the Medicaid rate. This means that as of October 1, 1998, Virginia's CMSIP FFP is approximately 66%. Furthermore, the FFP will continue to be 66% throughout the 1998-2000 biennium.

The state share for the CMSIP program is funded through the state general fund as well as the Virginia Children's Medical Security Plan Trust Fund as authorized in Item 339, budget program 44600 "Virginia Children's Medical Security Plan". The 1998 Appropriations Act appropriated funds for the CMSIP program in Item 335 budget subprogram 45609 (Medicaid's "Professional and Institutional Services") and Item 338, budget subprogram 46402 ("State Children's Health Insurance Services").

Local social service agencies will be responsible for performing eligibility determinations for the new CMSIP program. The 1998 Appropriations Act designated that $2,379,043 of the funding appropriated to DMAS in FY 1999, and $3,395,274 in FY 2000, will be transferred to the Department of Social Services for local departments of social services' CMSIP administration.

Forms: The Medicaid application form has been revised to include questions on the Children's Medical Security Insurance Plan. Information collected on this form will allow a determination of eligibility to be made for both Medicaid and the Children's Medical Security Insurance Plan. Use of this combined application for benefits will allow individuals to first be screened and enrolled in Medicaid, if appropriate, or to be enrolled in the VCMSIP if Medicaid eligibility is not appropriate.

Evaluation: The Department of Medical Assistance Services, in collaboration with the Department of Social Services, routinely monitors the implementation of eligibility issues to assure accurate eligibility determinations. DMAS will monitor the VCMSIP program as part of its ongoing management activities.

III. STATEMENT OF AGENCY FINAL ACTION

I hereby approve the foregoing Regulatory Review Summary and take the adoption action stated herein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia §9-6.14:7.1, of the Administrative Process Act.

August 24, 1999
Date

/s/ Dennis G. Smith
Dennis G. Smith, Director
Dept. of Medical Assistance Services

REGULATORY REVIEW CHECKLIST

To accompany Regulatory Review Package

Agency Department of Medical Assistance Services

Regulation title Virginia Children's Medical Security Insurance Program

Purpose of the regulation To promulgate permanent regulations for the Title XXI program.

Summary of items attached:

☒ **Item 1:** A copy of the proposed new regulation or revision to existing regulation.

☒ **Item 2:** A copy of the proposed regulation submission package required by the Virginia Administrative Process Act (Virginia Code Section 9-6.14:7.l.G [redesignated Section 9-6.14:7. l.H after January 1, 1995]). These requirements are:

- ☒ (i) the basis of the regulation, defined as the statutory authority for promulgating the regulations, including the identification of the section number and a brief statement relating the content of the statutory authority to the specific regulation proposed.
- ☒ (ii) the purpose of the regulation, defined as the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety and welfare.
- ☒ (iii) the substance of the regulation, defined as the identification and explanation of the key provisions of the regulation that make changes to the current status of the law.
- ☒ (iv) the issues of the regulation, defined as the primary advantages and disadvantages for the public, and as applicable for the agency or the state, of implementing the new regulatory provisions.
- ☒ (v) the estimated impact, defined as the projected number of persons affected, the projected costs, expressed as a dollar figure or range, for the implementation and compliance thereof, and the identity of any localities particularly affected by that regulation.

☒ **Item 3:** A statement from the Attorney General that the agency possesses, and has not exceeded, its statutory authority to promulgate the proposed regulation.

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☒ **Item 4:** A statement disclosing whether the contemplated regulation is mandated by state law or federal law or regulation, and, if mandated in whole or in part, a succinct statement of the source (including legal citation) and scope of the mandate, together **with an attached copy of all cited legal provisions.**

☒ **Item 5:** For any proposed regulation that exceeds the specific minimum requirements of a legally binding state or federal mandate, a specific rather than conclusory statement setting forth the reasoning by which the agency has concluded that the proposed regulation is essential to protect the health, safety or welfare of citizens or for the efficient and economical performance of an important governmental function.

☒ **Item 6:** For any proposed regulation that exceeds the specific minimum requirements of a legally binding state or federal mandate, a specific rather than conclusory statement describing the process by which the agency has considered less burdensome and less intrusive alternatives for achieving the essential purpose, the alternatives considered, and the reasoning by which the agency has rejected such alternatives.

☒ **Item 7:** A schedule setting forth when, no later than three (3) years after the proposed regulation is effective, the agency will initiate a review and reevaluation of the regulation to determine if it should be continued, amended, or terminated. Include a description of the specific and measurable goals the proposed regulation is intended to achieve, if practical.

☒ **Item 8:** A detailed fiscal impact analysis prepared in coordination with DPB that includes: (a) the projected cost to the state to implement and enforce the proposed regulation and (b) the source of funds to meet this projected cost.

/s/ Dennis G. Smith	8/24/99	VPS 8/25/99
Signature of Agency head	Date	Date forwarded to DPB & Secretary