



Exempt Action Final Regulation Agency Background Document

Agency name	DEPT. OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-50
Regulation title	Amount, Duration, and Scope of Medical and Remedial Care Services
Action title	Coverage of Smoking Cessation Services for Pregnant Women
Final agency action date	
Document preparation date	March 20, 2012

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), the agency 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 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The section of the State Plan for Medical Assistance that is affected by this action is the Amount, Duration, and Scope of Medical and Remedial Care Services: Services provided to the Categorically Needy without Limitations (12 VAC 30-50-20 and 50-60).

Prior to this new federal mandate, Medicaid only covered smoking cessation pharmacotherapy products for pregnant women. The Patient Protection and Affordable Care Act (PPACA) (P.L. 11-148) section 4107 mandated Medicaid coverage of comprehensive tobacco cessation services for pregnant women, including both counseling and pharmacotherapy, without the imposition of cost sharing (co-payments) charges.

Smoking causes a number of serious diseases, including cancer, heart disease, strokes and chronic obstructive pulmonary disease, as well as complications of pregnancy. The health

effects of smoking and its associated economic and social costs can be addressed through increased availability of tobacco cessation services, which have been demonstrated to be both clinically effective and cost effective. The Centers for Disease Control and Prevention (CDC) reports that the cost of these diseases both to individuals and the nation is substantial, resulting in an estimated \$96 billion a year in medical expenses, and an additional \$97 billion a year in lost productivity.

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 State Plan pages entitled the Amount, Duration and Scope of Medical and Remedial Care Services: Coverage of Smoking Cessation Services for Pregnant Women (12 VAC 30-50-20 and 50-60) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

Date

Cynthia B. Jones, 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 and 325, 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.

This action meets the exemption standard provided in the *Code of Virginia* § 2.2-4006(A)(4)(c), because these changes are "[n]ecessary to meet the requirements of federal law or regulations,

provided such regulations do not differ materially from those required by federal law or regulation." This new federal law [PPACA Sec. 4107(a)] states:

'Sec. 4107. Coverage of Comprehensive Tobacco Cessation Services for Pregnant Women in Medicaid.

'(a) Requiring Coverage of Counseling and Pharmacotherapy for Cessation of Tobacco Use by Pregnant Women- Section 1905 of the Social Security Act (42 U.S.C. 1396d), as amended by sections 2001(a)(3)(B) and 2303, is further amended—

(1) in subsection (a)(4)—

(A) by striking 'and' before '(C)'; and

(B) by inserting before the semicolon at the end the following new subparagraph: '(D) counseling and pharmacotherapy for cessation of tobacco use by pregnant women (as defined in subsection (bb))'; and

(2) by adding at the end the following:

'(bb)(1) For purposes of this title, the term '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 nonprescription 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—

'(A) by or under the supervision of a physician; or

'(B) by any other health care professional who—

'(i) is legally authorized to furnish such services under State law (or the State regulatory mechanism provided by State law) of the State in which the services are furnished; and

'(ii) is authorized to receive payment for other services under this title or is designated by the Secretary for this purpose.'

This regulatory package implements these requirements directly without any material difference.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or 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, nor does it decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.