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Fast-Track Regulation Agency Background Document

Agency name	Dept. of Medical Assistance Services
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC 30-50-610
VAC Chapter title(s)	Alternative Benefit Plan: Medicaid Expansion
Action title	Expansion-Related Changes: Alternative Benefit Plan
Date this document prepared	10/28/19

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) 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. 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

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

ABP = Alternative Benefit Plan
 CMS = Centers for Medicare and Medicaid Services
 DMAS = Department of Medical Assistance Services

Statement of Final Agency Action

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 Regulatory Review Summary entitled “Expansion-Related Changes: Alternative Benefit Plan” 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.

10/28/2019
 Date

/signature/
 Karen Kimsey, Director
 Dept. of Medical Assistance Services

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The expansion-related state plan amendments that are the subject of this regulatory action have been approved by CMS. The regulations are part of the overall implementation process for Medicaid expansion in accordance with ongoing directives in the 2018 Acts of Assembly, Chapter 2, Item 303.SS.4(a)(1), the 2019 Acts of Assembly, Chapter 854, Item 303.SS.4(a)(1), the 2020 Acts of Assembly, Chapter 1289, Item 313.QQ.3(a)(1), and the 2021 Special Session 1 Acts of Assembly, Item 313.QQ.3(a)(1) to “amend the State Plan for Medical Assistance under Title XIX of the Social Security Act, and any waivers thereof, to implement coverage for newly eligible individuals pursuant to 42 U.S.C. § 1396d(y)(1)[2010] of the Patient Protection and Affordable Care Act.”

This regulatory package is expected to be non-controversial because it describes an alternative benefit plan that was approved by CMS and went into effect on January 1, 2019. As of October 18, 2019, over 331,000 individuals had enrolled in Medicaid expansion, and no formal or informal complaints or comments had been received about the alternative benefit plan from any Medicaid member, Medicaid provider, or member of the public.

In addition, a NOIRA comment period that occurred from August 5, 2019 through September 4, 2019 produced no public comments.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Section 32.1-325 of the Code of Virginia authorizes the Board of Medical Assistance Services to administer and amend the State Plan for Medical Assistance and to promulgate regulations. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the State 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 USC § 1396a) provides governing authority for payments for services.

The 2018 Appropriation Act, Item 303.SS 4a and the 2019 Appropriation Act, 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.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The purpose of this regulation is to incorporate the CMS-approved Medicaid expansion Alternative Benefit Plan (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

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

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.

Issues

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.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no requirements in this regulation that are more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No state agencies, localities, or other entities are particularly affected by this change.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources 	None
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	None
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	CMS requires states to create an alternative benefit plan for the expansion population. This regulatory package includes the alternative benefit plan in the Virginia Administrative Code.

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	None
<p>Benefits the regulatory change is designed to produce.</p>	CMS requires states to create an alternative benefit plan for the expansion population. This regulatory package includes the alternative benefit plan in the Virginia Administrative Code.

Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>This regulatory action describes the alternative benefit plan approved by CMS. The alternative benefit plan will be used to cover individuals in the expansion population.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. 	<p>Approximately 400,000 individuals are expected to be covered by Medicaid expansion.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes 	None

<p>that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.</p>	
<p>Benefits the regulatory change is designed to produce.</p>	<p>CMS requires states to create an alternative benefit plan for the expansion population. This regulatory package includes the alternative benefit plan in the Virginia Administrative Code.</p>

Alternatives to Regulation

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.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 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. This regulatory action does not establish compliance or reporting requirements or performance standards for small businesses.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

DMAS is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

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://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Emily McClellan, Emily.McClellan@dmas.virginia.gov or via phone at 804-371-4300, or via mail at DMAS, 600 E. Broad Street, Richmond, VA 23219. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

Changes made in the Emergency Regulation:

New chapter-section number	New requirements	Other regulations and law that apply	Intent 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. D – Describes benefit assurances that Virginia makes to CMS. E – The ABP will use both managed care and fee-for-service delivery systems. F – Interaction with Health Insurance Premium Payment program. G – Interaction with cost-sharing. H – Describes general assurances that Virginia makes to CMS.	None.	This new section includes the alternative benefit plan in the Virginia Administrative Code.

Changes between the Emergency Regulation and the Fast Track Regulation:

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
12 CAC 30-50- 610 A	The citation for the definition of “adult group” was added.		For clarification.
12 VAC 30-50- 610 C	C(1) the word “all” was added. C (2) The following sentence was added to the end of the paragraph: “Pediatric services, including oral and vision care, are essential health benefits that are not covered for adults.”	None.	Both changes are clarifications.
12 VAC 30-50- 610 D	This paragraph and subparagraphs were removed. Subsequent paragraphs were re-lettered.		These assurances do not need to be in regulations, as they relate to agency responsibilities to CMS that are already spelled out in the state plan.
12 VAC 30-50- 610 E	Old paragraph E is now paragraph D. Old paragraph E1 was removed and the subsequent paragraphs were re-numbered. The following phrase was removed from the beginning of old paragraph E(3): “The Commonwealth assures that...” The relevant chapters of the VAC were added to the end of the old paragraph E(3) for clarification.		Paragraph E(1) is an assurance that does not need to be in regulations, as it relates to agency responsibilities to CMS that are already spelled out in the state plan. The phrase at the beginning of E(3) related to DMAS assurances was removed, but the text remains.
12 VAC 30-50- 610 H	This paragraph and subparagraphs were removed.		These assurances do not need to be in regulations, as they relate to agency responsibilities to CMS that are already spelled out in the state plan.