Virginia Regulatory Town Hall

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Final Regulation
Agency Background Document

Agency name	DEPT. OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30, Chapter 135
Regulation title	Demonstration Waivers
Action title	Family Planning Waiver
Document preparation date	June 26, 2003; NEED GOV APPROVAL BY AUG 5

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation. Do ***not*** *state each provision or amendment or restate the purpose and intent of the regulation.*

These suggested final regulations provide for the extension of Medicaid coverage of family planning services, annual gynecological exams, and testing for sexually transmitted diseases up to 24 months postpartum to women who received a Medicaid-reimbursed-pregnancy-related service on or after October 1, 2002.

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 Regulatory Review Summary with the attached regulations entitled Demonstration Waivers: Family Planning Waiver (12 VAC 30-135-10 through 135-99) 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.

_6/26/2003_____ _/s/ P. W. Finnerty_____

Date Patrick W. Finnerty, Director

Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

If the final text differs from the text at the proposed stage, please indicate whether the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

The *Code of Virginia* (1950) as amended, §32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code also provides, in the Administrative Process Act (APA) §§2.2-4007 and 2.2-4013, for this agency's promulgation of proposed regulations subject to the Governor's review.

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 it 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 proposal is to promulgate permanent regulations to supersede the current emergency regulations and to provide extended family planning services coverage for up to 22

months postpartum to women who received a Medicaid-reimbursed pregnancy-related service on or after October 1, 2002, and who continue to meet certain Medicaid eligibility income and residency standards. This action is expected to benefit the health and welfare of women in their childbearing years, as it will allow women to plan their pregnancies and decrease their risk of experiencing poor birth outcomes. Poor birth outcomes can result in high-cost neonatal care and expensive long-lasting pediatric health care services for developmental delays in children that are commonly associated with poor birth outcomes.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The regulations that are affected by this action are the Family Planning Demonstration Waiver regulations, 12 VAC 30, Chapter 135.

The 1999 General Assembly, in Chapter 1024 (HB 2717), directed DMAS to obtain the Centers for Medicare and Medicaid Services approval of a *Social Security Act §1115(a)* demonstration and research waiver to cover family planning services for a longer postpartum period than is now required by federal law under the Medicaid program. CMS approved DMAS' family planning waiver in July 2002, and the Commonwealth implemented, under the authority of emergency regulations, the family planning demonstration waiver on October 1, 2002.

Prior to the family planning waiver, women who became eligible for Medicaid solely due to pregnancy were only provided full Medicaid coverage for 60 days postpartum. At the end of this 60-day postpartum period, their Medicaid coverage was terminated unless they met the requirements to be covered under another Medicaid covered group. However, under the family planning waiver, women who do not meet another Medicaid covered group (but who continue to meet the financial and residency eligibility requirements for a pregnant women under Medicaid), will receive family planning waiver services up to an additional 22-months postpartum.

These suggested final regulations are consistent with the currently effective emergency regulations.

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.

The advantage for affected women is that they will be able to receive Medicaid for family planning services, gynecological exams, and testing for sexually transmitted diseases for an additional 22-months. This will allow these women to better plan their pregnancies and decrease their risk of experiencing poor birth outcomes.

The advantage to the Commonwealth is the decreased costs associated with publicly funded prenatal care, labor and delivery, and newborn and infant care costs. Because the waiver will allow women to better plan their pregnancies and may increase birth spacing, the current poor birth outcome rate may be decreased. The Commonwealth may experience decreased costs associated with caring for and educating children with developmental delays and disabilities that commonly result from poor birth outcomes. Because this waiver must be budget neutral (due to federal requirements) and is expected to generate cost savings, there are no disadvantages to the public or the Commonwealth that have been identified.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
10	Definitions.	Verb usage and spelling	Clarity and grammar
20 C	Provides conditions for recipient eligibility termination.	Deleted from this section and moved to section 30 (subpart D)	Clarity of eligibility requirements and procedures
20 C		Was subpart D at the proposed stage. Now allows automatic eligibility of medically indigent women in the waiver; also to clarify the enrollment process	Moved due to movement of subpart C. In response to specific public comments and federal approval of the change.
20 D	Subdivision was present in proposed but not the same context.	New subsection distinguishes the difference in eligibility and enrollment policies between medically indigent and medically needy pregnant women.	
20 E	Subdivision not in proposed	New subdivision distinguishes the difference in eligibility and enrollment policies between medically indigent women who became eligible for the waiver prior to October 1, 2003 and those who will become eligible after October 1, 2003.	Change was made in response to VPLC public comment and CMS authority for waiver change.

30 A	Not in proposed regulations	Addition of eligibility requirements	To make clear eligibility requirements in the appropriate section
30 B - D	Existing text in proposed		Text shifted down as result of the addition of new text at A.
Sec. 99	Not in proposed	Addition of sunset clause	Because this waiver is not permanent, clause permits automatic repeal of these regulations when CMS ends DMAS' authority to claim federal matching funds for the family planning waiver.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

The only public comments received by the Department during the NOIRA comment period were via a Family Planning Waiver implementation/outreach workgroup meeting in which various state agencies and private organizations participated. The comments received related to the emergency regulations, then in effect, excluding women whose pregnancies did not result in a Medicaid-reimbursed delivery. The Department considered these comments and modified the emergency regulations to permit women, who received pregnancy-related services reimbursed by Medicaid but whose pregnancy may not have resulted in a delivery, to be eligible for Waiver services.

DMAS' proposed regulations were published in the March 24, 2003, *Virginia Register* for their public comment period from March 24 through May 23, 2003. Comments were received from the Virginia Poverty Law Center. A summary of the comments received and the agency's response follows.

Commenter	Comment	Agency response
Virginia Poverty Law Center	Expressed concern regarding enrollment procedures/ policies causing a barrier to enrollment, which may be the main cause of the current low enrollment in the family planning waiver.	DMAS felt that the expressed concern had merit. Therefore, DMAS sought approval of CMS to modify the enrollment procedures in the waiver program. Previously, the procedure required that the Medicaid application and eligibility determination process had to be completed before a woman could be enrolled in the waiver. The suggested final regulations permit DMAS to automatically enroll women whose Virginia Medicaid coverage for a

		medically indigent pregnant woman ended on or after October 1, 2003.

DMAS expects that these suggested changes, in response to the public comments received, will allow for increased enrollment in the family planning waiver, which in turn will decrease the overall birth rate and subsequent possible poor birth outcomes. Such a change is expected to produce greater cost savings without increasing any administrative burdens on either the Commonwealth or providers.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

This entire VAC chapter is new. This is a new type of demonstration waiver program for DMAS and has been specifically designed to conform to federal design and evaluation requirements. It's purpose is to determine if extending prenatal care for poor women post delivery will enable them to space subsequent pregnancies and births farther apart. Wider spacing of subsequent pregnancies and births is expected to result in the improved health of these women as well as improved birth outcomes for their children. This waiver will enable DMAS to provide this important service and test this theory.

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

This regulatory action will not have any negative effects 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. Due to the waiver participants' abilities to better plan subsequent pregnancies, it may improve family stability and reduce demands on families' financial resources.