Proposed Regulation
Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation(s)	12 VAC30-50-190; 12 VAC30-141-820
Regulation title(s)	Amount, Duration, and Scope of Services for the Categorically Needy and Medically Needy: Dental Services; FAMIS MOMS Benefits
Action title	Dental services for Medicaid and FAMIS MOMS Pregnant Women
Date this document prepared	April 21, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

In the past, the Department of Medical Assistance Services only covered comprehensive dental services including orthodontia (12 VAC 30-50-190 and 42 CFR 440.100) for individuals under the age of 19 who were covered through the Family Access to Medical Insurance Security (FAMIS) plan and for individuals up to the age of 21 as a required element of the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program (12 VAC 30-50-130(B) and 42 CFR 440.40(b)). Only emergency dental care with the associated diagnostic tests was covered for adults (ages 21 and older). With the exception of not covering orthodontia, an emergency regulatory action added adult pregnant women to the individuals able to receive full dental services deemed appropriate. This regulatory action seeks to make those changes permanent.

This action makes no other changes in the amount, duration, or scope of currently covered dental services.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency'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, 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.

In addition, the Virginia Acts of Assembly Enrolled Bill, item 297, LLLL(2) provides that "The Department of Medical Assistance Services is authorized to amend the State Plan under Title XIX of the Social Security Act to add coverage for comprehensive dental services to pregnant women receiving services under the Medicaid program to include: (i) diagnostic, (ii) preventive, (iii) restorative, (iv) endodontics, (v) periodontics, (vi) prosthodontics both removable and fixed, (vii) oral surgery, and (viii) adjunctive general services."

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe 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.

Prior to this action, only those covered through FAMIS or those under the age of 21 who were covered through Medicaid were provided dental services. (Dental emergency coverage for adults was also provided.) Services are provided to individuals younger than 21 years of age as long as they are routine diagnostic, preventive, or restorative procedures necessary for oral health provided by or under the direct supervision of a dentist in accordance with the State Dental Practice Act.

Due to the need of pregnant women to receive dental care, the Governor gave DMAS emergency regulation authority to provide dental care for about 45,000 adult pregnant women enrolled in Medicaid and FAMIS MOMS who already receive publicly funded Medicaid/FAMIS MOMS health care services. This action seeks to utilize the authority granted by the Governor to update the dental services regulation to allow the Department to continue carry out the Governor's directive.

Substance

Please 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 section of the State Plan for Medical Assistance that is affected by this action is the Amount, Duration, and Scope of Services for the Categorically Needy and the Medically Needy: Dental Services (12 VAC 30-50-190). The section of the FAMIS MOMS regulations that is being amended is Benefits (12 VAC 30-141-820).

CURRENT POLICY

In the past, DMAS covered routine dental services through the *Smiles For Children* (SFC) program only for individuals younger than 21 years of age. Dental services are required by the FAMIS program (12 VAC 30-141-500 and 830) and by the EPSDT program (42 CFR 440.40(b) and 12 VAC 30-50-40(B)). The covered services are: diagnostic x-rays, exams; preventive cleanings; restorative fillings; endodontics (root canals); periodontics (gum related treatments); prosthodontics both removable and fixed (crowns, bridges, partials and dentures); orthodontia; oral surgery (extractions and other oral surgeries); and adjunctive general services (all covered services that do not fall into specific professional categories). The Department also covers emergency dental care, with the associated diagnostic tests, for adults.

ISSUES

Control of dental disease during pregnancy has been shown to have positive effect on the pregnancies' outcome. Both the American Congress of Obstetricians and Gynecologists (ACOG) and the American Dental Association (ADA) have published position papers supporting the need for and safety of oral health care during pregnancy.

RECOMMENDATIONS

In furtherance of the Governor's Healthy Virginia Plan, DMAS is working in concert with its dental benefits administrator, DentaQuest, to design an oral health program for adult pregnant women who are enrolled in Medicaid and FAMIS MOMS. The service categories are inclusive of those provided in Virginia's ***Smiles For Children*** (SFC) program, and, in comparison, are similar in scope to dental services available through the Virginia Department of Human Resources dental benefits for state employees, with the exception of orthodontia services which will not be covered.

Services for adult pregnant women will include the following when deemed medically appropriate: diagnostic x-rays, exams; preventive cleanings; restorative fillings; endodontics (root canals); periodontics (gum related treatment); prosthodontics both removable and fixed (crowns, bridges, partials and dentures); oral surgery (extractions and other oral surgeries); and adjunctive general services (all covered services that do not fall into specific professional

categories). The appropriateness of particular services for an individual pregnant woman will be determined by the dental provider based on the term of the woman's pregnancy.

DMAS estimates that approximately 45,000 adult pregnant women will be eligible for this service. Based on the average per individual expenditure for dental services, DMAS estimates that this new coverage may cost approximately $600,000 in SFY 2015 (beginning 3/1/15) and $3.2 M in SFY 2016. The funds for this service derive from the General Fund and DMAS' claiming of federal matching funds.

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.

Control of dental disease during and after pregnancies may have a positive effect on mothers' and infants' overall health. The advantages to indigent pregnant women will be the availability of dental services. The advantage to the Commonwealth and citizens will be the improved health outcomes (with the related cost savings). The disadvantage is a slight increase in Commonwealth expenditures. However, this cost is partially offset by the matching funds received from the Centers for Medicare and Medicaid Services.

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 more restrictive than federal requirements contained in this action.

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.

There are no localities that are particularly affected by this action as it applies statewide.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, DMAS is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, DMAS is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Myra Shook, Program Manager, Division of Health Care Services, Department of Medical AssistanceServices, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219; (804-786-1567); (Fax 804-786-1680); Myra.Shook@dmas.virginia.gov Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: http://www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

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**	FY 15: $300,000 FY 16: $1,600,000
Projected cost of the new regulations or changes to existing regulations on localities.	$0
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	Dental Benefits Administrator (DBA) - DentaQuest Dental providers Obstetricians Pregnant women seeking dental services
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: 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.	The proposed changes will allow small dental businesses to provide services and obtain reimbursement for additional customers, and as a result, these changes will provide income to small businesses. The administrative costs resulting from this regulation are expected to be minimal. There are

	no real estate costs related to this regulation. Approximately 45,000 pregnant women may be affected.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: **a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and** **b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.**	The proposed changes will allow small dental businesses to provide services and obtain reimbursement for additional customers, and as a result, these changes will provide income to small businesses. The administrative costs resulting from this regulation are expected to be minimal. There are no real estate costs related to this regulation.
Beneficial impact the regulation is designed to produce.	Control of dental disease in mothers is likely to contribute to the improvement in the overall health of the mother, thereby reducing the transmission of bacteria to their infants. Dental coverage for adult pregnant women enrolled in Medicaid or FAMIS MOMS will assist in improving the oral health of the mother and aid in the delivery of a healthy baby.

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.

The alternative to implementing coverage for adult pregnant women is that the dental services benefit would remain only available to children under EPSDT and adults with dental emergencies. If the current policy is maintained, pregnant women enrolled in Medicaid or FAMIS MOMS would not be eligible for a dental services benefit.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

The Agency has considered alternative reporting mechanisms and has structured the proposed change to minimize impact on small businesses while maximizing availability of services and administrative/regulatory efficiency.

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.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; nor 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 affect disposable family income.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

DMAS submitted its Notice of Intended Regulatory Action to the Registrar on January 28, 2015, for publication in the February 23, 2015, *Virginia Register* (VR 31:13). The comment period ended on March 25, 2015. No comments were received.

Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre**-emergency regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, and likely impact of proposed requirements
12 VAC 30-50-		Dental services are covered only for children younger than	This action adds to the existing regulation language permitting adult pregnant

190		21 years of age. Covered services include: preventive, restorative, oral surgery, periodontics, prosthodontics, orthodontics, etc. Emergency dental services for adults.	women to access all of these services, except for orthodontia, as determined appropriate by the dental provider. In addition, this action clarifies that DMAS will provide any medically necessary dental service to individuals younger than 21 years of age, as well as which services for individuals under the age of 21 do not require preauthorization or prepayment review.
12 VAC 30-141-820		Benefits for FAMIS MOMS	Reference to dental benefits, consistent with 12 VAC 30-50-190, is included.