**Virginia Regulatory Town Hall**

# Notice of Intended Regulatory Action
# Agency Background Document

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| **Agency Name:** | Dept. of Medical Assistance Services 12 VAC 30 |
| **VAC Chapter Number:** | 12 VAC 30-135 |
| **Regulation Title:** | Family Planning Waiver |
| **Action Title:** | Family Planning Waiver |
| **Date:** | 4/9/2002 |

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

## Purpose

*Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.*

The purpose of this regulatory action is to provide family planning (only) services for 24 months post-delivery for women who were Medicaid eligible for their prenatal care and deliveries. Currently, DMAS is permitted by federal law to only extend Medicaid eligibility (for all covered services) for only 60 days postpartum for these women.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.*

The Code of Virginia §§ 32.1-324 and 32.1-325; 42 U.S.C. §1369 provide the legal authority to administer the Medicaid Program.

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 of Virginia (as amended by the 1999 Virginia Acts of Assembly, Chapter 1024 (H2717)) required the BMAS to seek from CMS, approval of a waiver to cover family planning services for a longer postpartum period of time than is now required by federal law. The *Code of Virginia* (1950), as amended, in §32.1-324, grants the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides in the Administrative Process Act (APA) §§2.2-4007, 4012 and 4013, for the agency's promulgation of proposed regulations subject to the Governor's review.

Section 1115(a) of the *Social Security Act* (42 *United States Code* §1315) provides the Secretary of Health and Human Services the authority, through the Centers for Medicare and Medicaid Services (CMS), to waive certain federal Medicaid requirements for demonstration projects that are "likely to assist in promoting its objectives." Furthermore, certain costs associated with these demonstration projects, which otherwise would not be permissible, the Secretary may deem permissible for the duration of the project.

## Substance

*Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.*

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The demonstration waiver regulations created by this action are 12 VAC 30 Chapter 135.

The 1999 General Assembly, in Chapter 1024 (HB 2717), directed DMAS to obtain the CMS approval of a § 1115(a) waiver to cover family planning services for a longer postpartum period of time than is now required by federal law. Current policy provides that pregnant women who are Medicaid eligible for their prenatal care and delivery will receive full Medicaid services for 60-days postpartum. At the end of this time, their Medicaid eligibility is terminated unless they meet the requirements to be covered under another Medicaid covered group. Under the family planning waiver, women who do not meet another Medicaid covered group and who continue to meet the financial eligibility requirements for pregnant women under Medicaid, will receive family planning- only services up to 24-months postpartum.

This regulatory action is required in order to meet the legislative mandate which requires DMAS to request a § 1115(a) waiver and implement such family planning services for these women no later than three months after approval by the Centers of Medicare and Medicaid Services of the waiver.

These regulations are essential for the protection of the health of the women affected because it provides a previously unavailable health care service by extending the coverage period after delivery and by establishing the limits and requirements of this new family planning service.

For the purposes of this waiver, family planning services will be defined as only those services that delay or prevent pregnancy, other than abortions. Abortions are specifically excluded from coverage by the referenced Virginia legislation. Services and drugs (infertility treatments or any procedure used to diagnose level of fertility) that promote pregnancy shall not be covered.

Federal Medicaid law provides a number of options for states wishing to utilize innovative methods for delivering and paying for Medicaid services. States are currently using waiver programs to develop cost-effective, alternative methods of service delivery and to conduct demonstration projects. Waiver programs allow states to not only gain greater flexibility in managing their Medicaid programs, but also allow states to extend services and lessen eligibility requirements.

Demonstration waivers (§ 1115(a)) are granted for research purposes, to test a program improvement, and/or investigate an issue of interest. Projects must usually include a formal research or experimental methodology and provide for an independent evaluation. They are mostly limited for 3-4 years and are not usually renewable.

Twelve states have implemented Medicaid family planning research and demonstration waivers. The Centers for Medicare and Medicaid Services has granted the waivers for most states to last five years and two states have been awarded renewals. Completed evaluations conducted by states, as reported by the Henry T. Kaiser Family Foundation, show promising results such as decreased pregnancy and birth rates, increased birth spacing, lower incidence of poor birth outcomes, and significant cost savings due to decreased publicly-funded deliveries, and infant care. Rhode Island estimates that it saved two and one-half times its investment in Medicaid-covered family planning services.

It is expected that Virginia will experience the same positive results that other states are reporting. It is estimated that over the period of this project more than 15,000 women will receive services under this waiver. According to a study by Tompkins, 1986, one pregnancy is averted for every 15 women who seek family planning services. With this estimate, it is projected that Virginia will save a projected $7,251,000 in infant delivery and newborn and infant care costs alone. Financial savings may be gained by potential decreased costs associated with poor birth outcomes due to increasing birth spacing to longer than the American Medical Association recommended eighteen months. With the 90% federal match rate for family planning services provided to this population, the cost saving gained by Virginia for providing these services is expected to be significant.

This new waiver service will require significant but necessary computer system modifications. Administrative costs approximate $195,000 for waiver implementation and computer system modifications. It will also affect local departments of social services because they will have to annually review these women's income and resources to determine continued eligibility status.

## Alternatives

*Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.*

Due to the legislative mandate, the agency has no discretion in whether or not to implement this special service or in the service design due to the highly prescriptive nature of the legislation.

## Family Impact Statement

*Please provide a preliminary analysis of the potential 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.*

Under current policy, these women lose their Medicaid eligibility after 60 days postpartum (assuming they do not meet any other eligibility category's requirements). They also lose access to publicly funded health care (including family planning) services. These women will have access to publicly funded family planning services for an additional 22 months upon CMS approval of the demonstration waiver and the completion of the Administrative Process Act.