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## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	DEPT. OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12VAC 30-50, 12VAC 30-141
<b>Regulation title</b>	Amount, Duration and Scope of Services: Dental Service
<b>Action title</b>	Prior Authorization for Dental Services
<b>Document preparation date</b>	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://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](http://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](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Preamble

*The APA (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 1) *Please explain why this is an “emergency situation” as described above.*
- 2) *Summarize the key provisions of the new regulation or substantive changes to an existing regulation.*

The Administrative Process Act (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a

regulation to take effect no later than 280 days from its effective date. This suggested emergency regulation meets the standard at *COV 2.2-4011(i)* as discussed below.

This regulatory action qualifies as an emergency, pursuant to the authority of the *Code of Virginia*, 1950 as amended, § 2.2-4011, because it is responding to a mandate in the 2005 Virginia Appropriations Act (Item 322 H) that states “The Department of Medical Assistance Services shall have the authority to enact emergency regulations under § 2.2-4011 of the Administrative Process Act, to effect this provision within 280 days or less from the enactment of this act.” This change in the prior authorization of dental services is within this legislative authority.

The Governor is hereby requested to approve this agency’s adoption of the emergency regulations entitled Prior Authorization for Dental Services (12 VAC 30-50-190) and also authorize the initiation of the promulgation process provided for in § 2.2-4007.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

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The purpose of this regulatory action is to reshape the prior authorization regimen for dental services. Currently, the majority of dental services require prior authorization or pre-payment review. These regulations will lead to fewer prior authorization requirements and enhance access to dental services for pediatric Medicaid recipients and for participants in the Family Access to Medical Insurance Security (FAMIS) program.

### Legal basis

*Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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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.

**Substance**

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

The section of the State Plan for Medical Assistance that is affected by this change is: Amount, Duration and Scope of Services – Dental Services (12VAC30-50-190).

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC30-50-190 (B)		List of dental services that do not require prior authorization.	This section is deleted in the emergency regulation.
12 VAC30-50-190 (C)	12 VAC30-50-190 (B)	Notation that all services not described in 30-50-190(B) require prior authorization.	Changed to “ <del>All covered dental services not referenced above</del> Certain dental services as described in <u>Agency guidance documents</u> require preauthorization or prepayment review by the state agency or its designee.”
12 VAC30-50-190 (E)	12 VAC30-50-190 (D)	Limited oral surgery procedures require preauthorization.	Limited oral surgery procedures require preauthorization as <u>described in Agency guidance documents</u> .
12 VAC30-141-500		FAMIS Benefits reimbursement – no mention of dental prior authorization	States that Dental Services for FAMIS prior authorization will match prior authorization program in effect for Title XIX

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

DMAS is currently moving the administration of dental services from a completely “in-house” operation to a dental benefits administrator (DBA). As part of an effort to enhance and expand Medicaid dental services, DMAS reviewed its prior authorization structure. This emergency regulation will implement an updated prior authorization regimen crafted by DMAS’ dental benefits administrator to more closely match commercial dental preauthorization schedules. Many alternatives existed, as DMAS reconsidered the requirements for each covered dental service. Ultimately the Department decided to utilize the commercial expertise of its dental benefits administrator to fashion a prior authorization program that is in line with the prior authorization schedules utilized commercial dental insurance.

## Family impact

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

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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 and is not expected to affect disposable family income.