



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Dept. of Medical Assistance Services 12 VAC 30
VAC Chapter Number:	Chapter 135
Regulation Title:	Family Planning Waiver Services
Action Title:	Family Planning Services
Date:	11/26/2002

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

These proposed regulations provide for the extension of Medicaid coverage for 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.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed 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 provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of 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 24 months postpartum to women who received a Medicaid reimbursed pregnancy-related service while pregnant on or after October 1, 2002, and who continue to meet 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 health care services for developmentally delayed children.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The regulations that are affected by this action are the Family Planning 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 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 24-months postpartum.

These proposed regulations are consistent with the currently effective emergency regulations.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

The advantage for affected women is that they will be able to receive Medicaid coverage 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.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the

individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

During the initial 5-year award term of the waiver, the Commonwealth is projected to expend approximately an additional \$978,737 in state General Funds that it would not be expending without the implementation of the waiver. The one time total cost for the required computer modification to the Medicaid Management Information System to allow for implementation of the waiver was \$108,019.35 of which state General Funds covered approximately 25%. The estimated state General Funds required to meet other administrative costs such as the required formal evaluation and outreach are approximately \$58,350.

Although the Commonwealth will be expending additional funds for family planning services and various administrative costs, it is projected that the Family Planning Waiver will save the Commonwealth funds. A study has shown that for every \$1 spent to provide publicly funded contraceptive services, an average of \$3 was saved in Medicaid costs for pregnancy-related health care and medical care for newborns. Because one of the goals of this waiver is to decrease poor birth outcomes, further savings may also be gained by the decreased health care and education costs associated with children's developmental delays and disabilities that can result from poor birth outcomes.

All local departments of social services will be required to determine to the initial eligibility of women for the family planning waiver as well as conduct eligibility re-determinations for waiver enrolled women at least every 12 months until the women reach 24 months postpartum at which time they are no longer eligible waiver services.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

These proposed regulations are consistent with the currently effective emergency regulations.

Alternatives

Please describe the specific 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.

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. However, the agency will consider, to the extent possible, public comments.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

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.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

DMAS has examined these regulations and, in so far as is possible, has ensured that they are clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

Due to the federal evaluation requirements associated with a section § 1115 Waiver (the end of the CMS award term, in the case of this waiver, the initial award period is 5 years, and then 3 years thereafter), DMAS will be evaluating this program for its effectiveness and service coverage consistent therewith.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

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.