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Fast-Track Regulation
Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC 30-50-10; 12 VAC 30-50-30; 12 VAC 30-50-50; 12 VAC 30-50-70; 12 VAC 30-50-190; 12 VAC 30-50-210
VAC Chapter title(s)	Services provided to the categorically needy with limitations Services not provided to the categorically needy Services provided to the medically needy with limitations Services or devices not provided to the medically needy Dental services Prescribed drugs, dentures, and prosthetic devices, and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist
Action title	Adult Dental and 2024 Updates
Date this document prepared	4/17/2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code.*

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

DMAS is adding language to the Virginia Administrative Code to implement a comprehensive dental benefit for adults in accordance with a mandate from the General Assembly. In addition, changes to the adult dental benefit that are mandated by the 2023 General Assembly are being added.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CDC = Centers for Disease Control

CMS = Centers for Medicare and Medicaid Services

DMAS = Department of Medical Assistance Services

Statement of Final Agency Action

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.

On April 17, 2024, DMAS adopted final amendments to the regulatory action entitled, "Adult Dental and 2024 Updates."

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

The 2020 Appropriations Act, Item 313.IIIII states, "Effective July 1, 2021, the Department of Medical Assistance Services shall have the authority to amend the State Plan of Medical Assistance under Title XIX of the Social Security Act to provide a comprehensive dental benefit to adults…"

The 2023 Appropriations Act, Item 304.XXXX states, "Effective January 1, 2024, the Department of Medical Assistance Services is authorized to amend the State Plan for Medical Assistance Services to: (i) extend the age limitation for children receiving fluoride varnish from non-dental providers from "through age 3" to "through age 5"; (ii) remove the current limitation on the number of times a dentist can bill the behavioral management code when treating adults with disabilities; (iii) provide payment for crowns for patients who received root canal therapy prior to becoming a Medicaid beneficiary; and (iv) provide reimbursement for pre-treatment evaluations performed by dentists treating patients requiring deep sedation or general anesthesia to mirror the Centers for Medicare and Medicaid Services (CMS) guidelines."

This mandate is expected to be non-controversial because the Adult Dental benefit has been in place in Virginia since July 1, 2021 without complaints from Medicaid providers or members, or from members of the public. The 2024 changes represent slight modifications to the existing program, and these changes have been in place since January 1, 2024 without issue or complaint.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Code of Virginia § 32.1 325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations. The Code of Virginia § 32.1-324, grants the Director of the Department of Medical Assistance Services the authority of the Board when it is not in session.

The 2020 Appropriations Act, Item 313.IIIII states, "Effective July 1, 2021, the Department of Medical Assistance Services shall have the authority to amend the State Plan of Medical Assistance under Title XIX of the Social Security Act to provide a comprehensive dental benefit to adults…"

The 2023 Appropriations Act, Item 304.XXXX states, "Effective January 1, 2024, the Department of Medical Assistance Services is authorized to amend the State Plan for Medical Assistance Services to: (i) extend the age limitation for children receiving fluoride varnish from non-dental providers from "through age 3" to "through age 5"; (ii) remove the current limitation on the number of times a dentist can bill the behavioral management code when treating adults with disabilities; (iii) provide payment for crowns for patients who received root canal therapy prior to becoming a Medicaid beneficiary; and (iv) provide reimbursement for pre-treatment evaluations performed by dentists treating patients requiring deep sedation or general anesthesia to mirror the Centers for Medicare and Medicaid Services (CMS) guidelines."

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

This regulation is essential to protect the health, safety, and welfare of citizens in that it enables adult Medicaid members to receive dental services. There is a great deal of medical research indicating that poor dental health leads to poor health outcomes. According to the Centers for Disease Control (CDC), poor oral health is associated with chronic diseases such as diabetes and heart disease. By covering dental services for adult Medicaid members, it is expected that overall health will improve in the adult Medicaid population.

Substance

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.

DMAS added language to the state plan to implement a comprehensive dental benefit for adults. The coverage includes:

- Exams, Routine cleanings, X-rays
- Fillings and crowns
- Root canals Pulpal Debridement
- Scaling and Root Planing
- Gingivectomies
- Periodontal maintenance procedure
- Dentures, Partials, and Repair procedures
- Extractions
- Alveoplasty
- Anesthesia

As directed by the General Assembly, DMAS worked with its Dental Advisory Committee, including members of the Virginia Dental Association, the Old Dominion Dental Society, the Virginia Health Catalyst, the Virginia Commonwealth University School of Dentistry, the Virginia Dental Hygienists Association, the Virginia Health Care Association, a representative of the developmental and intellectual disability community, the Virginia Department of Health and the administrator of the Smiles for Children program to develop this benefit.

The adult benefit was modeled after the existing benefit for pregnant women, and includes preventive and restorative services but not cosmetic or orthodontic services.

DMAS worked with its dental benefit administrator, the Virginia Dental Association, the Old Dominion Dental Society, the Virginia Association of Free and Charitable Clinics, the Virginia Community Healthcare Association and other stakeholders to ensure an adequate network of providers and awareness among beneficiaries.

The 2024 changes include: providing payment for crowns for patients who received root canal therapy prior to becoming a Medicaid beneficiary; and providing reimbursement for pre-treatment evaluations performed by dentists treating patients requiring deep sedation or general anesthesia to mirror the Centers for Medicare and Medicaid Services (CMS) guidelines.

(The other items in the 2023 General Assembly mandate are being added to the Dental Provider Manual, and are not required in regulation.)

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The primary advantages to the public and the Commonwealth are the health improvements resulting from dental care- among the adult Medicaid population. There are no disadvantages to the public, the agency, or the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

None of the items in this regulatory package are more restrictive than federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No other State Agencies, localities, or other entities (as defined in the description above) will be particularly affected by these changes.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and	The costs of the adult benefit were analyzed in 2021 and were found to be $6,326,234 in state general funds, $1,060,575 in special funds, and $15,871,404 in federal funds in federal fiscal year 2021.

c) whether any costs or revenue loss can be absorbed within existing resources	The costs of the 2024 changes are: $345,492 in state funds (general and special) and $461,487 in federal funds in federal fiscal year 2024.
For other state agencies: projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	No costs to other state agencies.
For all agencies: Benefits the regulatory change is designed to produce.	Coverage of adult dental services will improve the overall health of Medicaid members.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	No impacts on localities.
Benefits the regulatory change is designed to produce.	Coverage of adult dental services will improve the overall health of Medicaid members.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Medicaid dental providers will be affected.
Agency's best estimate of the number of such entities that will be affected. 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.	2,120
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There are no costs for affected individuals, businesses, or other entities resulting from the regulatory change.
Benefits the regulatory change is designed to produce.	Coverage of adult dental services will improve the overall health of Medicaid members.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

No alternatives would meet the General Assembly mandates.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

No alternatives would meet the General Assembly mandates.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

DMAS is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: https://townhall.virginia.gov. Comments may also be submitted by mail, email or fax to: Emily McClellan, emily.mcclellan@dmas.virginia.gov, 804-371-4300, or DMAS Policy Division, 600 E. Broad Street,

Richmond, VA 23219. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
12 VAC 30-50-10			Dentures are added as a covered benefit.
12 VAC 30-50-30			Dentures are removed as a non-covered benefit.
12 VAC 30-50-50			Dentures are added as a covered benefit.
12 VAC 30-50-70			Dentures are removed as a non-covered benefit.
12 VAC 30-50-190		Adult dental benefits are not covered	Paragraph B: The words “age 21 and older” were added to the first sentence of paragraph B to clarify the difference in coverage provided under paragraph A. In addition, the word “bridges” was removed because these were not covered under the dental benefit for pregnant women and this error is being corrected. The general term “and other oral surgeries” was changed to the more specific “biopsies, alveoloplasty” in order to match the language that CMS required DMAS to include in the state plan. The phrase “pre-treatment evaluations for deep sedation or general anesthesia” was added to respond to the mandate from the 2023 Appropriations Act, Item 304.XXXX

			Paragraph C: The language was changed to reflect the CMS directive that limits for pregnant women cannot be greater than limits for non-pregnant adults. A new paragraph D is added to cover dental services for Medicaid adults. Old paragraphs D is now paragraph E. A website link in that paragraph is updated. Old paragraph E has been removed. It is no longer needed now that adult dental benefits are covered.
12 VAC 30-50-210			Information about dentures has been added.