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

<b>Agency name</b>	Department of Medical Assistance Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	12VAC30-10-140, 12VAC30-10-150, 12VAC30-30-10, 12VAC30-30-30, 12VAC30-40-100, 12VAC30-50-10, 12VAC30-50-50, 12VAC30-50-190, 12VAC30-50-290, 12VAC30-141-670, 12VAC30-141-750
<b>VAC Chapter title(s)</b>	State Plan under Title XIX of the Social Security Act Medical Assistance Program; General Provisions, Groups Covered and Agencies Responsible for Eligibility Determination, Eligibility Conditions and Requirements, Amount, Duration, and Scope of Medical and Remedial Care Services, Family Access to Medical Insurance Security Plan
<b>Action title</b>	12 Months Postpartum
<b>Date this document prepared</b>	July 11, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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 the subject matter, intent, and goals 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 or changes. If applicable, generally describe the existing regulation.*

The purpose of the action is to provide continuous coverage through 12 months postpartum for Medicaid and FAMIS pregnant and postpartum members and eligible individuals. A pregnant individual who is deemed eligible will maintain coverage for the duration of 12 months from the

date the pregnancy ends, regardless of what point in the prenatal or postpartum period they enroll in coverage. The coverage will be maintained regardless of a change in circumstances affecting income or household size.

The 2020 Special Session I Virginia Acts of Assembly, Chapter 56, directed DMAS to seek federal approval to extend Medicaid and FAMIS pregnancy coverage from 60 days to 12 months postpartum. The Centers for Medicare & Medicaid Services (CMS) approved Virginia’s Section 1115 demonstration amendment to provide extended postpartum coverage in November 2021. The 2022 Special Session I Virginia Acts of Assembly, Chapter 2, and the 2023 Special Session I Virginia Acts of Assembly, Chapter 1, clarify the terms of the extended postpartum coverage to ensure alignment with federal guidance recently issued pursuant to the American Rescue Plan Act of 2021 that outlines requirements for states adopting the 12-month postpartum extension option. Specifically, it states “Effective July 1, 2021, the Department of Medical Assistance Services shall seek federal authority through waiver and State Plan amendments under Titles XIX and XXI of the Social Security Act, as necessary, to provide continuous coverage to enrollees for the duration of pregnancy and through 12 months postpartum. The department shall have the authority to promulgate emergency regulations to implement these amendments within 280 days or less from the enactment of this Act. The department shall have authority to implement these amendments upon federal approval and prior to the completion of any regulatory process.”

**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.*

- CHIP = Children’s Health Insurance Program
- CMS = Centers for Medicare & Medicaid Services
- DMAS = Department of Medical Assistance Services

**Mandate and Impetus (Necessity for Emergency)**

*Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:*

- a) *Indicate whether the Governor’s Office has already approved the use of emergency regulatory authority for this regulatory change.*
- b) *Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

*As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change.*

The 2022 Special Session I Virginia Acts of Assembly, Chapter 2, and the 2023 Special Session I Virginia Acts of Assembly, Chapter 1, state-, “Effective July 1, 2021, the Department of Medical Assistance Services shall seek federal authority through waiver and State Plan amendments under Titles XIX and XXI of the Social Security Act, as necessary, to provide continuous coverage to

enrollees for the duration of pregnancy and through 12 months postpartum. The department shall have the authority to promulgate emergency regulations to implement these amendments within 280 days or less from the enactment of this Act. The department shall have authority to implement these amendments upon federal approval and prior to the completion of any regulatory process.”

**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 or Acts and 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.

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**Purpose**

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

This regulation is essential to protect the health, safety, and welfare of citizens. Given the high rates of maternal mortality and morbidity in the Commonwealth and a growing recognition of the importance of continuity of coverage and access to care during the vulnerable postpartum period, this change is aimed at improving health outcomes for postpartum women and their infants by providing Medicaid and FAMIS MOMS coverage for a continuous 12 months postpartum. A critical goal of providing the expanded postpartum coverage is to improve birth outcomes among

populations with disproportionately high rates of maternal mortality and morbidity. A substantial body of research has established Medicaid coverage as a powerful tool for addressing maternal mortality and morbidity. The positive impacts of extending Medicaid coverage to postpartum women also translate to better outcomes for their children – resulting in coverage gains, better access to care, and improved health and development outcomes.

## 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.*

This action provides continuous coverage through 12 months postpartum for Medicaid and FAMIS pregnant and postpartum members and eligible individuals. A pregnant individual who is deemed eligible will maintain coverage for the duration of 12 months from the date the pregnancy ends, regardless of what point in the prenatal or postpartum period they enroll in coverage. The coverage will be maintained regardless of a change in circumstances affecting income or household size.

The 2020 Special Session I Virginia Acts of Assembly, Chapter 56, directed DMAS to seek federal approval to extend Medicaid and FAMIS pregnancy coverage from 60 days to 12 months postpartum. The Centers for Medicare and Medicaid Services (CMS) approved Virginia’s Section 1115 demonstration amendment to provide extended postpartum coverage in November 2021. The 2022 Special Session I Virginia Acts of Assembly, Chapter 2, and the 2023 Special Session I Virginia Acts of Assembly, Chapter 1, clarify the terms of the extended postpartum coverage to ensure alignment with federal guidance recently issued pursuant to the American Rescue Plan Act of 2021 that outlines requirements for states adopting the 12-month postpartum extension option. Specifically, it states “Effective July 1, 2021, the Department of Medical Assistance Services shall seek federal authority through waiver and State Plan amendments under Titles XIX and XXI of the Social Security Act, as necessary, to provide continuous coverage to enrollees for the duration of pregnancy and through 12 months postpartum. The department shall have the authority to promulgate emergency regulations to implement these amendments within 280 days or less from the enactment of this Act. The department shall have authority to implement these amendments upon federal approval and prior to the completion of any regulatory process.”

Given the high rates of maternal mortality and morbidity in the Commonwealth and a growing recognition of the importance of continuity of coverage and access to care during the vulnerable postpartum period, this change is aimed at improving health outcomes for postpartum women and their infants by providing Medicaid and FAMIS MOMS coverage for a continuous 12 months postpartum. A critical goal of providing the expanded postpartum coverage is to improve birth outcomes among populations with disproportionately high rates of maternal mortality and morbidity. A substantial body of research has established Medicaid coverage as a powerful tool for addressing maternal mortality and morbidity. The positive impacts of extending Medicaid coverage to postpartum women also translate to better outcomes for their children – resulting in coverage gains, better access to care, and improved health and development outcomes.

## 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.*

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The primary advantages to the public are the health improvements resulting from expanded postpartum coverage. There are no disadvantages to the public, the agency, or the Commonwealth.

## 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.*

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No alternatives would meet the General Assembly mandate.

## Periodic Review and Small Business Impact Review Announcement

This Emergency/NOIRA is not being used to announce a periodic review or a small business impact review.

## 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. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

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DMAS is providing an opportunity for comments on this Emergency/NOIRA, including but not limited to (i) the costs and benefits of the Emergency regulations, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

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 Meredith Lee, DMAS, 600 E. Broad Street, Richmond, VA 23219, 804-371-0552, or [Meredith.Lee@dmas.virginia.gov](mailto:Meredith.Lee@dmas.virginia.gov). 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 the proposed stage of this regulatory action.

### 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.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
12VAC30-10-140		Includes 60-day postpartum period.	Changes postpartum period to 12-month period.
12VAC30-10-150		Includes 60-day postpartum period.	Changes postpartum period to 12-month period.
12VAC30-30-10		Includes 60-day postpartum period.	Changes postpartum period to 12-month period.
12VAC30-30-30		Includes 60-day postpartum period.	Changes postpartum period to 12-month period.
12VAC30-40-100		Includes 60-day postpartum period.	Changes postpartum period to 12-month period.
12VAC30-50-10		Extended services to pregnant women mentions 60-day postpartum period	Changes postpartum period to 12-month period.
12VAC30-50-50		Extended services to pregnant women mentions 60-day postpartum period	Changes postpartum period to 12-month period.
12VAC30-50-190		Medically appropriate dental services for an adult woman during the term of her pregnancy and postpartum mentions 60-day postpartum period.	Changes postpartum period to 12-month period.
12VAC30-50-290		Includes 60-day postpartum period.	Changes postpartum period to 12-month period.
12VAC30-141-670		Definition of “pregnant woman” mentions 60-day postpartum period.	Changes postpartum period to 12-month period.
12VAC30-141-750		Includes 60-day postpartum period.	Changes postpartum period to 12-month period.