Virginia Regulatory Town Hall

Proposed Regulation
Agency Background Document

Agency Name:	Dept. of Medical Assistance Services; 12 VAC 30
VAC Chapter Number:	12 VAC 30, Chapter 120
Regulation Title:	Medallion II
Action Title:	Changes from BBA
Date:	

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summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed.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.

This proposed regulation reflects several types of changes to the Medallion II managed care system. This regulation revises and updates the Medallion II regulations to address several operational and waiver changes in the Medallion II program. Some of these changes arise from changes in federal law set forth in the Balanced Budget Act (BBA). Other changes are being made to clarify existing regulations. Finally, certain of the amendments in this package are being made in order to accommodate changes in other programs that have an impact on managed care, such as changes to the Medicaid school health program. Revisions are being made in the following sections of the Medallion II regulations: Definitions (12 VAC 30-120-360), Medallion II enrollees (12 VAC 30-120-370), Managed Care Organization (MCO) responsibilities (12 VAC 30-120-380), Quality Control and Utilization Review (12 VAC 30-120-400), Sanctions (12 VAC 30-120-410) and Grievances and Appeals (12 VAC 30-120-420).

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

The Code of Virginia (1950) as amended, section 32.1-325, grants to the Board of Medical Assistance Services the authority to administer the Plan for Medical Assistance. The Code of Virginia (1950) as amended, section 32.1-324, authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority was established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a], which provides the governing authority for DMAS to administer the State's Medicaid program.

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.

This regulatory action is expected to have a positive impact on the health, safety and welfare of Virginia citizens. The changes set forth in this proposed regulation enhance the ability of Medallion II enrollees to make health care choices, specifically with regard to enrollment and disenrollment. These changes also provide improved access to appeal and grievance procedures in cases where a recipient is aggrieved by an MCO or agency decision.

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 sections of the Virginia Administrative Code that are affected by this change are 12 VAC 30-120-360 through 30-120-420. Because Chapter 120 consists of Non-State Plan regulations, no sections of the State Plan for Medical Assistance are affected. The particular sections of Chapter 120 that are affected are as follows:

Definitions (12 VAC 30-120-360)

The definitions of "Health care plan" and "School based services" are both updated with newer language that relects both the language of the BBA and more current usage in the health care industry. The definition of "Managed care organization" is amended to bring it in line with current requirements under the BBA and changes in Department of Health regulations.

Medallion II enrollees (12 VAC 30-120-370)

Changes are being made to this section with regard to exclusions from the Medallion II program. These changes encompass both clarifications of certain exclusions and the addition of new exclusions. In addition, the section covering disenrollment is amended to require DMAS to provide written responses to good cause requests for disenrollment by Medallion II clients.

Managed Care Organization (MCO) responsibilities (12 VAC 30-120-380)

Formerly, MCO's were not permitted to charge co-payments to their Medallion II clients. This regulatory change adds language permitting MCO's to impose cost-sharing obligations on Medallion II clients. If an MCO chooses to impose such costs, it must adhere to the co-payment schedules set forth in 12 VAC 30-20-150 and 12 VAC 30-20-160.

Grievances and Appeals (12 VAC 30-120-420)

Several procedural changes are being made in this section. Language is added requiring enrollees to follow up on an oral request for appeal in writing and within ten business days, unless it is for an expedited appeal. The requirement that MCOs provide DMAS copies of all requests for appeals and appeal decisions is being deleted. Finally, the timeframe of 14 days for MCOs to issue appeal decisions is being changed to 30 days to conform to other standard appeal timeframes in DMAS 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.

No disadvantages to the public have been identified in connection with this regulation. The agency projects no negative issues involved in implementing this regulatory change.

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.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	There is no projected cost to the state to implement this regulation.
Projected cost of the regulation on localities	There is no cost to localities to implement this regulation.
Description of the individuals, businesses or other entities likely to be affected by the regulation	Managed Care Organizations enrolled as providers in the Medallion II program, as well as the Medallion II clients themselves.
Agency's best estimate of the number of such entities that will be affected	There are seven (7) MCOs that contract with DMAS for the provision of Medallion II services, and approximately 262,961 clients currently enrolled in Medallion II.
Projected cost of the regulation for affected individuals, businesses, or other entities	Administrative costs, and co-pays in amounts of no more than $3.00 under 12 VAC 30-20-150, which sets forth co-pay amounts for recipients

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.

Current section number	Current requirement	Proposed change and rationale
12VAC30-120-360	Contains definitions for "Health care plan" that references "health maintenance organization (HMO). Contains a definition for "Managed care organization" incorporating the Managed Care Health Insurance Plan (MCHIP) model. Contains a definition for; "School based services" that does not	► Health care plan now references "managed care organization" because this term is used throughout the BBA in lieu of "HMO." The substance of the definition is changed to conform to the requirements of the BBA (42 CFR part 438). The definition of "Managed care organization" now references the participation/solvency criteria of 42 CFR Part 438 and the MCHIP reference is dropped because the Virginia Dept. of Health no longer requires Medallion II MCO's to meet the MCHIP definition. ► "School based services" has been replaced in other state regulations with the term

12VAC30-120-360	reference 12 VAC 30-50-229.1 (School health services).	"School health services," so this change is being made to harmonize the managed care regulations with state school health regulations; this includes revising the definition of school based services and including a cite to 12 VAC 30-50-229.1. The change also removes the reference to screenings.
12VAC30-120-370	**List of persons excluded from participation in Medallion II [12 VAC 30-120-370.B (1-13)]:** ► Individuals enrolled in residential treatment or treatment foster care (TFC). ► Pregnant women (third trimester) newly enrolled in managed care if their obstetrical provider does not participate with any state MCOs. ► Individuals with Medicare. ► Terminally ill individuals who have been preassigned but not yet enrolled, whose life expectancy is six months or less. **List of persons excluded from participation in Medallion II (12 VAC 30-120-370.B):** **Newborn enrollment procedures (12 VAC 30-120-370.D.4)** Newborn stays with mother's	**Clarifications to exclusion list are as follows:** ► Individuals <u>under age 21</u> enrolled in residential treatment or TFC. Language was added to clarify that the exclusion is for those under age 21. ► Pregnant women (third trimester) newly enrolled in managed care if their obstetrical provider does not participate with <u>the new enrollee's assigned MCO.</u> ► Individuals with other comprehensive health insurance (including Medicare). ► Terminally ill (< 6 mo.) individuals who request exclusion during preassignment or within a later timeframe designated by DMAS. **List expanded to include [(12 VAC 30-120-370.B (14-17)]:** ► Individuals with an eligibility period less than 3 months; ► Individuals who receive services through the Commonwealth's Title XXI (SCHIP) program; ► Individuals whose eligibility period is retroactive only; ► Individuals who have been consistently non-compliant with policies and procedures of DMAS or their MCO(s). **Newborn enrollment procedures (12 VAC 30-120-370.D.4)** ► Clarifies that automatic enrollment doesn't

12VAC30-120-370	MCO for three months or until discharged from inpatient care. **Client disenrollment procedures (12 VAC 30-120-370.H.2** Procedures for requesting disenrollment for cause from the Medallion II program.	disqualify newborn from disenrollment by choice. ► Clarifies that newborn's enrollment is not contingent upon mother's continued enrollment. **Client disenrollment procedures (12 VAC 30-120-370.H.2** Amended to clarify that a written response be provided to a good cause request in the timeframe set by DMAS and in compliance with 42 CFR § 438.56.
12VAC30-120-380.I	MCO responsibilities: does not allow for cost-sharing measures.	Revised to conform to 42 CFR § 438.108, which allows MCOs to impose cost sharing obligations on Medallion II enrollees.
12VAC30-120-420.C.1 12VAC30-120-420.G/J 12VAC30-120-420.H	Client grievances/appeals: allows for oral notice of grievance/request for appeal. Specifies that MCOs submit to DMAS documentation of any written requests for appeal. Specifies a 14-day timeframe in which DMAS must issue standard appeal decisions.	Change specifies that oral requests for appeal must be followed up in writing within 10 business days. This change is being made to conform the Medallion II regulations to 42 CFR § 438.402.b.3.ii, which allows DMAS discretion in setting the timeframe. Deletes this requirement because MCOs already submit monthly appeal/grievance reports to DMAS. Timeframe changed to 30 days to be consistent with other timeframes in appeals process.

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.

Many changes to the regulations described herein are as a result of requirements set forth in the Balanced Budget Act of 1997. While most BBA related changes were reflected in the previous exempt regulation package, there were several regulations that required the state to select and establish procedural timeframes from a range set out in 42 CFR § 438 *et. seq*. For efficiency of operation and the protection of recipients' notice and due process rights, the procedural timeframes selected for Medallion II were based upon current practice in the DMAS program. Where neither a current practice nor policy was in place, timeframes were established in

accordance with Centers for Medicare and Medicaid Services (CMS) criteria that the timeframe be "reasonable." The bulk of other changes made in this regulatory package, which were previously promulgated in an emergency regulation, are clarifications of waiver policies, and all changes made are consistent with current practice and with the Medallion II Waiver.

Public Comment

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

No comments were received.

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.

The agency has reviewed the regulation and has determined that it is 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.

DMAS will include the monitoring, in collaboration with the affected industry, of this regulatory action as part of its ongoing management of State Plan policies and its Executive Order 21(02) activities.

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 regulation is projected to have a positive impact on recipients and their families. Items were amended to clarify interpretation and facilitate a better understanding for recipients and

providers with regard to several definitions, and to expand client choice by providing enhanced availability of exclusion exceptions found in 12VAC 30-120-370. Changes were made to provide greater access to recipient grievance and appeal procedures, and to afford greater protection for recipient appeal rights. The changes to this regulation will not strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; encourage or discourage economic self-sufficiency, self-pride; the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; they will not strengthen or erode the marital commitment. Changes to allow the MCOs the option of imposing cost sharing obligations to Medallion II recipients may decrease disposable family income. The impact of this particular change is anticipated to be small and any amounts charged would be consistent with the state's maximum copayment schedules found in 12 VAC 30-20-150 and –160.