



## Fast Track Regulation Agency Background Document

<b>Agency name</b>	Department of Medical Assistance Services
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30, Chapter 135
<b>Regulation title</b>	Demonstration Waiver Services
<b>Action title</b>	Children's Mental Health Waiver
<b>Document preparation date</b>	04/24/2007

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\\_apr.htm](http://www.townhall.state.va.us/dpbpages/dpb_apr.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)).

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

The Department of Medical Assistance Services (DMAS) was awarded a Psychiatric Residential Treatment Facility (PRTF) Demonstration Grant from the Centers for Medicare and Medicaid Services (CMS). The program, Children's Mental Health Waiver (CMH), is a new Medicaid home and community-based program and as such, no changes are being made to existing regulations. This grant will permit Medicaid to fund additional intensive community-based services for Medicaid eligible children and youth who have been in a PRTF for ninety or more days. Children and adolescents under 21 years of age, who have been in a PRTF for 90 or more days, are the target population for this waiver program. The Children's Mental Health Waiver will offer home and community-based services to individuals who: (a) are found to require a PRTF level of institutional care under the State plan; (b) have been in PRTFs for 90 or more days; (c) continue to meet criteria for institutional care even though they are being served in the community; (d) meet applicable Medicaid financial eligibility criteria; (e) require one or more

waiver services in order to function in the community; and, (f) exercise freedom of choice by choosing to enter the waiver program in lieu of receiving institutional care.

**Statement of agency final action**

*Please 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.*

I hereby approve the foregoing Agency Background Document with the attached regulations Children’s Mental Health Waiver (12VAC 30-135-1000 et seq.) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act and is full, true, and correctly dated.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Patrick W. Finnerty, Director  
Dept. of Medical Assistance Services

**Legal basis**

*Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

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.

The Deficit Reduction Act of 2005 (DRA), section 6063, established a demonstration grant program, the Community-Based Alternatives to Psychiatric Residential Treatment Facilities (PRTFs). DMAS was awarded a federal demonstration grant that supports the principles of the New Freedom Initiative (NFI), a new federal program that seeks to expand community integration for individuals currently residing in mental health institutional settings. The New Freedom Commission on Mental Health was created on April 29, 2002 and was charged with

making recommendations that would enable adults with serious mental illnesses and youth with serious emotional disturbances to live, work, learn, and participate fully in their communities.

### Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of this regulatory action is to remove barriers to community living for people with serious emotional disturbances. Goals of the demonstration include shortened stays in the PRTFs, development of an enhanced array of community-based services, and improved outcomes for children and their families. The services are intended to be the critical factors in making community care possible.

In Virginia, children who have primary mental health issues currently do not have access to in-home and community supports, such as companion services and respite care, that could provide families with the support needed to allow them to remain in the home. These children do not qualify for current home and community-based services (HCBS) waivers and do not meet criteria for the current alternate institutional placements now available in other waivers. Without these supports, families may not be able to keep their children at home. This new waiver program is needed in order to create a system of services to maintain individuals in their communities.

The waiver services were chosen to complement the existing continuum of care in the State Plan. Services to be included are: respite services, in-home residential supports, companion services, family/caregiver training, environmental modifications, and therapeutic consultation.

In order to implement this demonstration, DMAS must promulgate these regulations.

This regulatory action will help protect the health, safety and welfare of children having primary mental health issues, by providing these new services to enhance their ability to live, work, learn and participate fully in their communities.

### Rationale for using fast track process

*Please explain why the fast track process is being used to promulgate this regulation.*

*Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from (1) 10 or more persons, (2) any member of the applicable standing committee of either house of the General Assembly or (3) any member of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

The agency is using the Fast-Track process in order to complete the needed regulatory changes as soon as possible to implement the waiver currently being drafted according to CMS requirements. An advisory group was involved in the grant application process as well as in the development of the program details, and objections are not anticipated. The organizations represented in this stakeholder advisory group are representatives from:

- The Office of Comprehensive Services Act
- Department of Social Services
- Department of Mental Health, Mental Retardation and Substance Abuse Services, as well as the local community services boards (Virginia Association of Community Services Boards)
- Department of Juvenile Justice
- Provider representatives (People Places, For Children's Sake, Virginia Home Care Association)
- Client advocates (Virginia Office for Protection and Advocacy, ENDependence Center of Northern Virginia, Voices for Virginia's Children) and
- DMAS.

In addition, the goal of promoting community-based care is one that is common across Virginia's child-serving agencies.

This regulatory action will give DMAS the authority to operate the Children's Mental Health Waiver which provides children who reside in a PRTF and their parents/caregivers the option to receive services in the community instead of these children remaining in institutions.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)*

The regulations affected by this change are: Children Mental Health Waiver (12VAC 30-135-1000 et seq.)

This action establishes regulations for DMAS to operate the Children's Mental Health Waiver which is a new waiver program that will provide home and community-based services to children in lieu of continued treatment in a PRTF. DMAS will provide community-based services to individuals under 21 years of age who:

- Are found to require a PRTF level of institutional care;
- Have resided in a PRTF for 90 or more days;
- Continue to meet criteria for institutional care;
- Meet applicable Medicaid financial eligibility criteria;

- Require one or more demonstration waiver services in order to function in the community; and
- Choose to enter the demonstration program in lieu of receiving care in a PRTF.

The following services were chosen to be included in this demonstration to complement the existing continuum of care available through the State Plan. The services are intended to be the critical factors in making community care possible. Services selected to be a part of the demonstration were identified as those most likely to ensure the child’s success in a community placement. Services include:

- (1) Respite services;
- (2) In-home residential supports;
- (3) Companion services;
- (4) Family/caregiver training;
- (5) Environmental modifications; and
- (6) Therapeutic consultation.

The ninety day provision is necessary to ensure that children have a chance to be stabilized in the residential treatment program before discharge.

When an individual is identified as meeting the targeted criteria for this waiver, the individual or his legal representative will be informed of any feasible alternatives under the waiver and given the choice of either continued institutional or home and community-based services. During the initial assessment and the development of the Individual Service Plan (ISP), an individual or his legal representative will receive training in how to exercise and maintain decision-making authority. They will also be informed of their rights to self-direct certain services if desired.

**Issues**

- Please identify the issues associated with the proposed regulatory action, 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

The primary advantage for the Commonwealth’s citizens will be that children with serious emotional disturbance will be able to live as independently as possible in their communities. It will allow these children to live with their families instead of remaining in PRTFs. To the extent of their abilities, they will be able to function in their communities and attend school. One possible disadvantage to the PRTFs could be the reduction of individuals residing in these facilities. To the extent that it affects their reimbursement for Medicaid individuals, this new waiver could receive a negative response from PRTFs. DMAS has included a PRTF provider on the Demonstration Workgroup and will encourage these providers to develop community-based

services as part of their continuum of care. The agency projects no negative issues involved in implementing this regulatory change.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<p><b>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</b></p>	<p>Projected cost total for FY 2007 is \$19,326 (\$9,663 GF; \$9,663 NGF). Projected cost Total for FY 2008 is \$262,028 (\$118,514 GF; \$143,514 NGF). DMAS is estimating a need for 2 FTEs (at 50% FFP) to manage the grant program. DMAS is also estimating an MMIS system change cost in the first year. DMAS is estimating a recurring evaluation cost beginning in the second year of the program.</p>
<p><b>Projected cost of the regulation on localities</b></p>	<p>For children participating in the Comprehensive Services Act, this will save the localities money because there is currently no local match required for Medicaid community-based services.</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b></p>	<p>Children with serious emotional disturbances and their families, current and potential Medicaid enrolled providers, Comprehensive Services Act, Department of Social Services, Department of Mental Health, Mental Retardation, and Substance Abuse Services, Department of Juvenile Justice, and Department of Education</p>
<p><b>Agency's best estimate of the number of such entities that will be affected</b></p>	<p>We expect this Demonstration will serve approximately 200 children in the first year.</p>
<p><b>Projected cost of the regulation for affected individuals, businesses, or other entities</b></p>	<p>PRTFs could experience a reduction in the number of individuals residing in these facilities, which would affect their reimbursement. The Medicaid program anticipates that small cost savings may be possible.</p>

**Alternatives**

*Please describe any viable 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.*

These regulations were developed by DMAS based on the input of the stakeholders who helped with the development of the grant application. The choices made regarding all aspects of this program were based upon consideration of the health and safety for the targeted population being served and input by the workgroup. DMAS sought this grant approval at the direction of the 2006 General Assembly Chapter 3 Item 302 B(1) and (2).

Due to the fact that DMAS was awarded this grant by CMS, and the specific comments of the workgroup, there were no alternatives to this proposed regulatory action other than to choose not to implement this Demonstration. Such an action would result in these children remaining in PRTFs rather than living in communities.

**Family impact**

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

This regulatory action will not have any negative affects on the institution of the family or family stability. It will strengthen the authority and rights of parents in determining the most appropriate care for their child; it will not encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, or one’s children; nor will it strengthen or erode the marital commitment. The CMH Waiver will have a positive impact on families. By providing CMH Waiver services, the waiver will provide a less restrictive alternative to PRTF placement for those families caring for a family member with a serious emotional disturbance.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Proposed change and rationale	Current requirement
N/A	12VAC30-120-1300	Definitions	N/A

N/A	12VAC30-120-1305	General Coverage and Requirements for Children's Mental Health Waiver Services	N/A
N/A	12VAC30-120-1310	Client Eligibility Requirements and Intake Process	N/A
N/A	12-VAC30-120-1315	Participation Standards for Home and Community-Based Waiver Services Participating Providers	N/A
N/A	12VAC30-120-1320	Agency-Directed Companion Services	N/A
N/A	12VAC30-120-1320	Agency-Directed Companion Services	N/A
N/A	12VAC30-120-1325	Agency-Directed Respite Services	N/A
N/A	12VAC30-120-1330	Consumer-Directed Companion and Respite Services	N/A
N/A	12VAC30-120-1335	Environmental Modifications	N/A
N/A	12VAC30-120-1340	Family/Caregiver Training	N/A
N/A	12VAC30-120-1345	Residential Support Services	N/A
N/A	12VAC30-120-1350	Therapeutic Consultation	N/A
N/A	12-VAC30-120-1355	Reevaluation of Service Need and Quality Management Review	N/A
N/A	12VAC30-120-1360	Sunset Provision	N/A