Virginia Regulatory Town Hall

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

Agency name	Department of Medical Assistance Services (DMAS)
Virginia Administrative Code (VAC) citation	12VAC30-120-
Regulation title	Waiver Services Managed Care
Action title	Acute Long Term Care
Date this document prepared	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Preamble

The APA (Code of Virginia § 2.2-4011) states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

1) Please explain why this is an "emergency situation" as described above.
2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The Administrative Process Act (Section 2.2-4011) states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a

regulation to take effect no later than 280 days from its effective date. This suggested emergency regulation meets the standard at *COV* 2.2-4011(ii) as discussed below.

Item 302 M.1 and M.2 of the *2006 Acts of Assembly*, provides the Department of Medical Assistance Services with the authority to seek federal approval of these changes to its MEDALLION waiver and its Medallion II waiver. In order to conform the state regulations to the federally approved changes and to implement the provisions of these Acts, the Department shall promulgate emergency regulations to become effective within 280 days or less from the enactment of this act. The Department shall implement these necessary regulatory changes to be consistent with federal approval of the waiver changes.

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled Waiver Services Managed Care, Acute-Long Term Care (12 VAC 30-120-370 and 12VAC 30-120-380) and also authorize the initiation of the permanent regulatory promulgation process provided for in § 2.2-4007.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe 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 *Social Security Act* § 1915 (b) [42 U.S.C. 1396n(b)] permits the U.S. Secretary of Health and Human Services to waive certain requirements of the *Act* to permit states to implement primary care case management systems or managed care programs which provide for recipients to be restricted to certain providers for their care. These managed care programs are permitted to the extent that they are cost-effective and efficient and are not inconsistent with the purposes of this title.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

Governor Timothy Kaine, with support from the 2006 General Assembly, set in motion a major reform of the Virginia Medicaid funded long-term care services program, which will focus on

care coordination and integration of acute and long-term care services for our most vulnerable citizens—low-income seniors and individuals with disabilities. The legislation (*Special Session I, 2006 Virginia Acts of Assembly, Chapter 3*) directed the Department of Medical Assistance Services (DMAS), in consultation with the appropriate stakeholders, to develop a long range blueprint for the development and implementation of an integrated acute and long-term care system. In addition to this plan, the Department was directed to move forward with two different models for the integration of acute and long-term care services: a community model (Chapter 847 Item 302, AAA) and a regional model (Item 302, BBB). Finally, the legislation provided $1.5 million in start-up funds for six potential PACE sites.

Based on the legislation, the Department of Medical Assistance Services (DMAS), in consultation with the appropriate stakeholders, was directed to develop a long-range blueprint for the development and implementation of an integrated acute and long-term care system that included:

- an explanation on how the various community and state level stakeholders will be involved in the development and implementation of the new program models(s);
- a description of the various steps for development and implementation of the program model(s), including a review of other states' models, funding populations served, services provided, education of clients and providers, and location of programs;
- a description how the existing system is funded and how integration will impact funding; and
- a description of the evaluation methods that will be used to ensure that the program provides access, quality, and consumer satisfaction.

At the present time, more than 49,000 elderly and persons with disabilities have their health care needs successfully managed by one of seven MCO's across Virginia. However, once these clients require long-term care services (i.e., either nursing facility care or home and community based waiver services) and/or become both Medicaid and Medicare eligible (known as dual eligibles), they are moved out of a managed care environment into a fragmented fee-for-service environment. This disruption in care is not good for enrollees, and costly for the Commonwealth.

The goal of this regulatory action is to improve the service method through which long-term care recipients obtain their acute care medical needs.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Currently, once managed care enrollees are admitted into hospitals or are identified from the community as requiring long-term care services, they are assigned to either a hospital discharge planner or a Pre-Admission Screening Team (PAS) to determine if they require long-term care

services. Long-term care services are defined by the Commonwealth as nursing facility care (NF), Program of All Inclusive Care for the Elderly (PACE) site placement, or home-and-community-based waiver services. Once these enrollees are enrolled for either of these services, they are being cancelled from the MCO. Cancellation from the MCOs due to enrollment into waiver services impacts approximately 505 enrollees per year. Recipients being placed in NFs or PACE programs will continue to be canceled from their assigned MCOs.

This change would provide that once enrollees are enrolled in home-and-community-based services, with the exception of the Technology Assisted waiver, they will remain in the care of their MCO for their acute medical care services. Their waiver services, including transportation to the waiver services, will be paid through the Medicaid fee-for-service program. Their acute medical services will be provided for and paid for through the managed care program.

This program change will also not address the dual eligibles (those persons who are eligible for both Medicare and Medicaid); these particular enrollees will still be moved out of Medicaid managed care when they become Medicare eligible. In order to extend the benefits of MCOs to this population of individuals, significant underlying statutory discrepancies between Medicare requirements and Medicaid policies must be addressed at the federal level.

This regulatory change will prevent enrollees from having to change from their current MCOs for their acute medical care therefore eliminating disruptions in care. This program change will begin the process of expanding managed care for the elderly and persons with disabilities for their primary acute care needs and long term care needs in an effort to provide additional managed care coverage for more Virginia Medicaid eligibles.

Persons found to require the types of services provided through Virginia's Technology Assisted Waiver are being excluded from this change due to the unique nature of their service needs.

This change represents only Phase I of the subjects discussed as part of the Blueprint for the Integration of Acute and Long Term Care Services.

Substance

Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

The regulations affected by this action are the following sections of the Waiver Services Managed Care (12 VAC 30-120-370 and 12 VAC 30-120-380).

Currently, persons who are enrolled in managed care organizations who subsequently become enrolled for long-term care services (either NF care or waiver services), are being canceled from their MCOs to receive their acute and long-term care services through the fee-for-service payment mechanism in conjunction with their NF or waiver services. This change will permit waiver enrolled persons to remain in their MCOs while receiving their waiver services. This

change will not affect those persons who qualify for the Technology Assisted Waiver, NF nor for persons classified as dual eligibles (Medicare-Medicaid eligibles).

The Home-and-Community-Based Waiver population is currently excluded from participation in the managed care program. This regulatory change will expand managed care operations over "un-managed" populations and also integrate acute and long-term care by improving the current system and increasing care coordination for the elderly and certain persons with disabilities. This program change will prevent enrollees from having to change their current managed care organization for their acute medical care, therefore eliminating any disruptions in care. Key provisions allow for MCO enrollees who are newly enrolled into the HIV-AIDS, Individual and Family Developmental Disabilities Support (IFDDS), Mental Retardation (MR), Elderly or Disabled with Consumer Direction (EDCD), Day Support, and Alzheimer's Waiver programs to continue enrollment in one of the contracted MCOs for their acute care medical needs.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-120-370		Excludes recipients enrolled in one of the Home and Community Based Waivers from participation in the managed care program (Medallion II)	Allows MCO recipients who are newly enrolled in the AIDS, IFDDS, MR, EDCD, Day Support, and Alzheimer's Waiver programs to continue enrollment in one of the contracted Medicaid MCOs for their acute care medical needs. Recipients enrolled in the Technology Assisted Waivers will continue to be excluded from managed care participation.
12VAC30-120-380		Identifies the services that are provided outside (carved out) of the MCO network to recipients enrolled in the MCO.	Adds services provided under the AIDS, IFDDS, MR, EDCD, Day Support, and Alzheimer's Waiver programs and waiver services-related transportation to the list of services provided outside of the MCO network to those recipients enrolled in the MCO.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

This regulatory action is based on a specific mandate provided in the *2006 Acts of Assembly* and is intended to conform the agency's current policies to the integration of acute and long term-care services system.

Failure to implement these recommended changes will result in the continuation of the current policy that negatively impacts these affected aging Medicaid recipients.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments on this notice.

Governor Timothy Kaine, with support from the 2006 General Assembly, set in motion a major reform of the Virginia Medicaid funded long-term care services program, which will focus on care coordination and integration of acute and long-term care services for our most vulnerable citizens—low-income seniors and individuals with disabilities. The legislation (*Special Session I, 2006 Virginia Acts of Assembly, Chapter 3*) directed the Department of Medical Assistance Services (DMAS), in consultation with the appropriate stakeholders, to develop a long range blueprint for the development and implementation of an integrated acute and long-term care system. In addition to this plan, the Department was directed to move forward with two different models for the integration of acute and long-term care services: a community model and a regional model. Finally, the legislation provided $1.5 million in start-up funds for six potential PACE sites.

In response to the legislation, DMAS held three meetings from September through October 2006 to involve the community and state level stakeholders in the development of the Blueprint. The meetings provided an overview of other states' integration models and the opportunity for the public to comment and provide input into the design of the program. DMAS intends to involve the stakeholders throughout the design and implementation of the integrated acute and long-term care models to ensure that consumer protections, consumer choice, consumer direction, quality of care, and access to needed services are maintained. DMAS supports the vision of *One Community, the Olmstead Initiative* to allow individuals to live as independently as possible and in the most integrated setting.

More than 75 stakeholders representing consumers, providers, legislature, and other state agencies attended the meetings. The following is a summary of the topics covered at each of the meetings. All meeting materials (including presentations and summaries) may be found on the DMAS website at http://www.dmas.virginia.gov/altc-home.htm.

September 7, 2006. The first meeting was designed to provide information to all the stakeholders on Virginia's Medicaid funded acute and long-term care services and the national perspective on the integration of acute and long-term care services. The guest speakers were from a national consulting firm, national long-term care organizations, and Virginia managed care organizations. The meeting also identified integrated care program design issues that Virginia needs to consider.

September 26, 2006. The second meeting was designed to allow the stakeholders to have input into three key program design issues for developing an integrated acute and long-term care program: (1) what populations should be covered in the integrated system, (2) what services should be included, and (3) what enrollment methodology should be used. The first part of the meeting, sponsored by the AARP, focused on the issue of consumer protections, choice, and direction that is needed for any integrated model of care. The second part focused on options for developing an integrated model for acute and long term care services.

October 18, 2006. The final meeting was to hear public comment on the integration of acute and long-term care services. Five individuals representing various stakeholders presented their comments at this meeting. Other written comments received were distributed at the meeting.

In addition, DMAS posted a draft version of the Blueprint report on its website (www.dmas.virginia.gov) to allow various stakeholders the opportunity to comment on the report itself prior to final submission to the Governor and the General Assembly.

The agency's Notice of Intended Regulatory Action (NOIRA) represents only an initial phase in the multiple regulatory actions to be required for the complex concepts being addressed by the Blueprint for the Integration of Acute and Long Term Care Services. The agency will accept comments on this NOIRA but is not holding a separate public comment hearing.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to ALTC, DMAS 600 East Broad Street Richmond, VA 23219 or **altc@dmas.virginia.gov**. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

Participatory approach

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

DMAS held three Acute Long Term Care meetings from September through October 2006 to involve community and state level stakeholders in the development of the Blueprint. More than 75 stakeholders representing consumers, providers, legislature, and other state agencies attended the meetings. Information about these meetings is detailed above.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.

These changes do 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, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment; and increase or decrease disposable family income.

MEMBER ORGANIZATIONS ATTENDING THE BLUEPRINT MEETINGS
SEPTEMBER – OCTOBER 2006

Board of Medical Assistance Services
American Association of Retired Persons
Amerigroup Virginia Health Plan
University of VA Medical Center
Southern Health/CareNet Health Plan
George Mason University
Riverside Health Systems
Virginia Association of Community Services Boards
Virginia Association for Home Care
Virginia Hospital and Healthcare Association
Virginia Network of Private Providers
Virginia Health Care Association
Dept of Mental Health, Mental Retardation and Substance Abuse Services
Virginia Premier Health Plan
Brain Injury Association of VA
Joint Commission on Health Care
Dept of Planning and Budget
Virginia Commonwealth University Medical Center
University of VA Health System
Anthem HealthKeepers Plus
Virginia Association of Health Plans
Driftwoods Consulting
Endependence Center
Virginia Dept of Social Services
Virginia Poverty Law Center
Senior Navigator
Optima Family Care
Virginia Pharmacists Association
Persons with Disabilities
Old Dominion Medical Society
National Alliance on Mental Illness
Medical Society of Virginia/Virginia Academy of Pediatrics
Children's Health Insurance Program Advisory Committee
Virginia Association of Area Agencies on Aging
Medicaid Managed Care Organization Representatives