



townhall.virginia.gov

Exempt Action Final Regulation Agency Background Document

| | |
|-------------------------------------------------------|-------------------------------------|
| Agency name | DEPT OF MEDICAL ASSISTANCE SERVICES |
| Virginia Administrative Code (VAC) citation(s) | 12 VAC 30-141-500 |
| Regulation title(s) | Benefits Reimbursement |
| Action title | FAMIS Behavioral Therapy Services |
| Final agency action date | July 20, 2016 |
| Date this document prepared | July 20, 2016 |

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, is encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This action is to add coverage of behavioral therapy services, including applied behavior analysis, to FAMIS recipients in order to update the Department of Medical Assistance Services' (DMAS') Family Access to Medical Insurance Security Plan (FAMIS) regulations (12VAC30-141-500). These changes have been required by the Virginia General Assembly and will enable DMAS to ensure services are provided to qualified recipients.

Statement of final agency 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 Summary with the attached amended regulations, Benefits Reimbursement (12 VAC 30-141-500) and adopt the action stated therein. I certify that this final exempt regulatory action has completed all the requirements of the Code of Virginia § 2.2-4006(A), of the Administrative Process Act.

July 20, 2016
Date

/signature/
Cynthia B. Jones, Director

Dept. of Medical Assistance Services

Legal Basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

The *Code of Virginia* (1950) as amended, § 32.1-351, grants to the Board of Medical Assistance Services the authority to administer and amend the Family Access to Medical Insurance Security Plan. The *Code of Virginia* (1950) as amended, § 32.1-351, authorizes the Director of DMAS to administer and amend the Family Access to Medical Insurance Security Plan 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 2016 *Acts of Assembly*, Item 305.G states that, "The Department of Medical Assistance Services shall amend the state plan for the Children's Health Insurance Program to add coverage for applied behavior analysis (ABA) services. The department shall have the authority to implement this change effective upon passage of this act, and prior to the completion of any regulatory process undertaken in order to effect such change."

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.

DMAS proposes to initiate uniform coverage of behavioral therapy services for individuals under the age of 21 who are covered under the FAMIS program and who meet the medical necessity criteria. These services have been available to individuals under the age of 21 who are covered

by the Medicaid program, and these regulatory changes will allow individuals in the FAMIS program to receive the same benefits as individuals in the Medicaid program.

Trained professionals rendering early intensive treatment, including but not limited to applied behavior analysis techniques, has been shown to be effective in ameliorating impairments in major life functions arising from autism spectrum disorders and other diagnosed conditions.

Behavioral therapies are systematic interventions that are primarily provided in the family home. Family training and counseling related to the implementation of the behavioral therapy shall be included as part of the behavioral therapy service. These services are designed to enhance communication skills and decrease maladaptive patterns of behavior which, if left untreated, could lead to more complex problems and the need for a greater or a more restrictive level of care, such as institutionalization.

The General Assembly has required that the current coverage gap between FAMIS and Medicaid be closed and a more uniform approach to treatment be implemented. Reimbursements for behavior therapy services are currently excluded from coverage under MCHIP.

The primary advantage to the Commonwealth will be the statewide uniform application of policies. There are no disadvantages to the Commonwealth for this action.

Family Impact

Please assess the 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 or rights of parents in the education, nurturing, and supervision of their children; nor 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, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.