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Exempt Action Final Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-135-100 through 12 VAC 30-135-360
Regulation title(s)	Demonstration Waivers: Children's Mental Health Waiver
Action title	Repeal Children's Mental Health Waiver
Final agency action date	2/5/2019
Date this document prepared	2/5/2019

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) 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. If applicable, generally describe the existing regulation.

This action repeals the regulations for the Medicaid Children's Mental Health Waiver pursuant to the federal discontinuation of federal funding. This grant program was designed to enable the Center for Medicare and Medicaid Services (CMS) to develop reliable cost and utilization data to evaluate the effectiveness of community-based service delivery models for children with serious emotional disturbances who required the psychiatric residential treatment facility level of care. With the loss of federal authority for this program, DMAS has terminated this waiver effective September 30, 2017.

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 (Repeal Children's Mental Health Waiver (12 VAC 30-135-100 through 12 VAC 30-135-360) 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.

Date

Jennifer S. Lee, M.D., 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, § 32.1-325, 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 initial federal authority for this waiver, section 6063 of the *Deficit Reduction Act of 2005*, was withdrawn effective September 30, 2012, and funding for this demonstration waiver ceased in the federal budget for 2015. Effective September 30, 2012, DMAS no longer admitted new individuals to this waiver per federal requirements and the last remaining youth was transferred to another DMAS waiver program in 2017.

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.

This action repeals the Children's Mental Health Waiver (CMH) regulations (12 VAC 30-135-100 through 12 VAC 30-135-360) pursuant to the federal cancellation of the demonstration waiver authority and funding withdrawal.

CURRENT POLICY

Prior to 2005, DMAS did not provide for a home and community based waiver dedicated to youth with serious emotional disturbances (SED) who required services provided in psychiatric residential treatment facilities (PRTFs).

In September 2006, Virginia was selected, with eight other states, to participate in the Centers for Medicare and Medicaid Services PRTF demonstration program. Through this CMS-approved demonstration, DMAS was funded to cover intensive home and community services for Medicaid-eligible youth, having diagnoses of serious emotional disturbance, and who required the level of care provided in PRTFs. Such youth, in order to be approved for this waiver, had to have been in a PRTF for at least 90 days and had to require waiver covered services to remain in their communities.

The objectives of this demonstration waiver were:

- Shorten the duration of admissions in PRTFs via the availability of community services;
- Provide access to an array of community-based services designed to promote independence and support for SED youth;
- Improve the youths' condition so that services, particularly institutionalization, will no longer be needed.

In the CMH waiver, DMAS provided respite (both agency-directed and consumer-directed), service facilitation, companion services (both agency-directed and consumer-directed), environmental modifications, family/caregiver training, in-home residential supports, transition coordination and therapeutic consultation. The waiver included self-direction options to allow for greater flexibility in hiring and training of chosen supports and in general service delivery. In addition, other State Plan services, such as intensive in-home services, therapeutic day treatment, individual/family/group therapy, and targeted case management, were used to support waiver participants and their families.

The CMH waiver enrolled 83 unduplicated participants from April 2008 until September 30, 2012, when authority was federally terminated. In the absence of ongoing federal authority that extended the demonstration, no new individuals were enrolled in the waiver after September 30, 2012. Youth

who were enrolled in the waiver as of 9/30/2012, continued to receive CMH program services as long as they continued to meet eligibility criteria. Youth who no longer met criteria were screened for other waivers or behavioral health services, as appropriate. The last youth remaining in this program transferred to the Developmental Disability waiver on April 17, 2017.

ISSUES

Federal statutory authority, and the related federal funding, was terminated by CMS

RECOMMENDATIONS

In light of the loss of federal statutory authority and federal funding, DMAS recommends the repeal of these regulations.

Periodic Review Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the proposed stage, please indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

The repeal of these regulations is not having a small business impact.